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No. 2173

IN THE

**United States Circuit Court of Appeals**

**For the Ninth Circuit**

ALASKA FISHERMEN'S PACKING  
COMPANY (a corporation),

*Plaintiff in Error,*

vs.

CHIN QUONG,

*Defendant in Error.*

**BRIEF FOR DEFENDANT IN ERROR.**

JOHN T. THORNTON,

*Attorney for Defendant in Error.*

*Filed this*.....*day of October, 1912.*

FRANK D. MONCKTON, Clerk

**FILED**

*By*.....*Deputy Clerk.*

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### Statement of Case

This action was commenced by the defendant in error, Chin Quong, as plaintiff, on the 14th day of November, 1910, in the Superior Court of the City and County of San Francisco, State of California, to recover from the plaintiff in error, Alaska Fishermen's Packing Company, as defendant, the sum of twenty thousand two hundred and forty and 10/100 (\$20,240.10) dollars, as damages for the breach of a certain contract in writing, and for certain work, labor and services done and performed, and for certain moneys paid and expended by plaintiff for defendant at its request (Trans. pp. 1-12).

For convenience, the parties will be referred to herein, as they were designated in the court below.

Defendant appeared in the action, and duly removed it for trial to the United States Circuit Court, in and for the Ninth Circuit, Northern District of California (Trans. pp. 30; 41-49).

The action was tried before the Hon. William C. Van Fleet, and a jury, and a verdict rendered in favor of the plaintiff and against the defendant for the sum of twenty thousand one hundred and ninety-two and 10/100 (\$20,192.10) dollars, and to reverse the judgment entered thereon, defendant prosecutes this writ of error (Trans. pp. 67, 68 and 69; 220).

The complaint contains three counts or causes of action (Trans. pp. 1-5); *the second count or cause of action* is for the recovery of \$1671.40 for and on account of certain work, labor and services done and performed, and for certain moneys paid and expended by the plaintiff for the defendant at its request; this cause of action and the sum thereby claimed was expressly admitted to be due the plaintiff by the defendant, and need not be further adverted to (Trans. pp. 3 and 4, 179 and 180, 181).

*The first and third counts or causes of action* were to recover the sum of \$18,568.70, and were based upon the contract attached to the complaint, and marked exhibit "A", the first count relying on and pleading the contract specially, and the third count being for the recovery of the same amount

as the first count, upon the common count for work, labor and services performed by the plaintiff for the defendant at its request, in executing and fulfilling the terms of the contract exhibit "A" (Trans. pp. 1-3; 4-5).

The contract, the making of which was admitted, was between the plaintiff, Chin Quong, as the party of the first part, and the defendant, Alaska Fishermen's Packing Company, as the party of the second part (Trans. pp. 6-12); the plaintiff, by said contract, undertook and agreed for the consideration therein expressed, to furnish all the skilled and unskilled labor required at the cannery of defendant, at Nushagak, Alaska, for the purpose of canning salmon during the season of 1910, and to that end, to furnish and place aboard defendant's vessel, at the Port of San Francisco, on or about the 12th day of April, 1910, a sufficient force of competent men, not less than one hundred and forty (140), fifty-seven per cent (57%) being Chinese, including three (3) testers, to prepare and put up every working day during the term of the contract, all the fish that could reasonably be expected to be had at the cannery, say twenty-seven hundred (2700) cases, or more if possible (Trans. p. 6); *plaintiff agreed to receive the fish on the wharf at Nushagak, to clean and prepare them in the fish-house for canning, and to transport them to the cannery* (Trans. pp. 6-7), to make all cans, the bottoms and tops and whatever may be required; to wipe and cap the cans by machinery; to salt, fill, solder, bath, pile, label,

and put in cases, and nail up the entire pack of the season (Trans. p. 7); the contract also contained the following material stipulations:

"All swelled cans, in excess of four (4) cans per hundred (100), all light cans, all cans collapsed, burst or deficient in seams (where any of said faults or defects are the result of want of skill of the party of the first part) to be paid for by the said party of the first part, at the rate of six (6) cents per can" (Trans. p. 7).

"All leaks to be mended by skilled labor daily by party of the first part, the said mended cans to be accepted or rejected according to the condition of the fish, and if not so mended daily, the party of the first part agrees to pay to the party of the second part, the sum of three (\$3.00) dollars per case" (Trans. p. 7).

"All work to be done under the direction and supervision of the superintendent of the cannery and to his entire satisfaction and to be done with the utmost diligence and speed and care, and in the most complete and workmanlike manner" (Trans. p. 7).

"In consideration of the covenants and agreements herein agreed to be done and performed by the party of the first part, the said Alaska Fishermen's Packing Company agrees to pay the said party of the first part the sum of fifty-five (55) cents for each and every case containing four (4) dozen tall cans of one (1) pound each, when filled by the Jensen can-filling machines and sixty (60) cents per case of four (4) dozen tall cans each, the cans of which are filled by hand, when caused by the failure of the Jensen can-filling machines to work" (Trans. p. 8).

"The party of the second part guarantees the pack at this cannery to reach sixty-six thousand (66,000) cases, and hereby agrees, if

the amount should be less than that, to pay the party of the first part, the same as if the pack had been that amount. If over sixty-six thousand cases, each case to be paid for at the price agreed upon in this contract" (Trans. p. 10).

"All payments under this contract to be made to Quong Kee Company or to their order" (Trans. p. 10).

"And it is expressly understood that the party of the first part is to put up not less than twenty-seven hundred (2700) cases of fish per working day, provided they are furnished with the necessary fish for that purpose, by the party of the second part. In default thereof, they agree to forfeit to the party of the second part, one (\$1.00) dollar per case" (Trans. pp. 10-11).

Plaintiff in the first count of his complaint, in paragraph 1, alleged that the defendant was a corporation duly created under the laws of the State of Oregon (Trans. p. 1), that plaintiff and defendant made and entered into the contract, exhibit "A" (Trans. p. 1, para. 2), that plaintiff "duly performed all of the covenants, stipulations and conditions of said agreement on his part to be performed" (Trans. p. 1, para. 3); that defendant had paid to plaintiff the sum of \$14,000.00 as advance payments under the contract (Trans. p. 2, para. 4); that there was due and payable under the terms of the contract by defendant, upon the full performance thereof by plaintiff, the sum of \$36,600.00, of which defendant had paid to plaintiff \$14,000.00 (Trans. p. 2, para. 6); that defendant had paid out and expended, at the request of plain-

tiff and on his behalf, the sum of \$1283.30, and that defendant was entitled to a further credit, upon the contract, in the sum of \$2448.00 for and on account of an excess of do-overs, leaving a balance due plaintiff by defendant under the contract of \$18,568.70 (Trans. pp. 2-3, para. 7), and that no part of this sum had been paid plaintiff by defendant (Trans. p. 3, para. 10).

In paragraphs 8 and 9 of the first count, it was alleged that certain persons constituted the partnership, doing business under the firm name and style of the Quong Kee Company, and that said partnership, prior to the commencement of this action, assigned and set over to the plaintiff herein, all of its right, title and interest in and to the contract sued on, and to all money due or to grow due thereon (Trans. p. 3, paras. 8-9).

By the third count of his complaint, plaintiff, after alleging the due incorporation of defendant under the laws of the State of Oregon, charges that defendant is indebted to him in the sum of \$18,568.70, on account of certain work, labor and services done and performed by plaintiff for defendant at its request, in fulfilling and performing the same terms, stipulations and conditions as are imposed on him by the contract.

*The answer of the defendant* admitted all of the allegations of the first cause of action stated in the complaint, except those contained in paragraphs 3, 8 and 9 (Trans. pp. 53, 54, 55 and 56). Defendant

further denied all of the allegations of the third count of the complaint (Trans. p. 57), and then set up various causes of counter-claim, which will be discussed in detail hereafter.

In this state of the pleadings, plaintiff introduced certain evidence and rested, and the defendant, after the denial of a motion for a nonsuit, as to the first cause of action stated in the complaint, made by it at the close of the plaintiff's evidence (Trans. pp. 92-93), commenced to introduce evidence in support of its answer and counter-claims (Trans. pp. 93-196); and after certain evidence in rebuttal and surrebuttal, both parties rested, and after the instructions to the jury, the cause was submitted to them with the result stated.

Defendant, in its opening brief, relies for a reversal of the judgment, upon certain alleged errors of law, specified in the following manner:

(1) "The trial court erred in denying defendant's motion for a nonsuit, to the first cause of action set forth in the complaint (Defendant's Exception 7, p. 92)" (page 11 of brief).

(2) "The court erred in instructing the jury that the word 'furnish' as used in the instructions means 'deliver'" (page 27 of brief).

(3) "The court erred in instructing the jury that they may take into consideration the usual loss resulting from spoiled cans that occurs in operations of the kind in question" (brief, page 34).

(4) "Errors in the admission and exclusion of evidence" (brief, page 35).

(a) "The court erred in permitting the sales account of defendant for the year 1910 to be admitted in evidence (pp. 89-92)" (brief, page 35).

(b) "The court erred in overruling the motion of defendant to strike out the answer given by the witness Kep Yung concerning the character and the efficiency of the machinery of the defendant company (p. 81)" (brief, page 36).

(c) "The court erred in sustaining an objection to a question asked by defendant of its witness, McGregor, concerning the market price of Alaska red salmon in the year 1910 (Defendant's Exception No. 8, p. 165)" (brief, page 36).

(d) "The court erred in overruling an objection to a question asked by defendant of its witness Berglund, called in surrebuttal (p. 178) concerning the number of piles of cases of salmon that were left at the cannery when the ship sailed on its homeward voyage" (brief, page 40).

Defendant has failed to observe the requirements of Rules 11 and 24 of this court, both in the preparation of its assignment of errors, and of its brief; Rule 11 provides that

"when the error alleged is to admission or to the rejection of evidence, the assignment of errors shall quote the full substance of the evidence admitted or rejected", and that

"errors not assigned according to this rule will be disregarded, but the court, at its option, may notice a plain error not assigned".

Rule 24 provides that the brief shall contain

"(b) a specification of the errors relied upon, which, in cases brought up by writ of error,

shall set out separately and particularly each error asserted and intended to be urged", and that

"when the error alleged is to the admission or to the rejection of evidence, the specification shall quote the full substance of the evidence admitted or rejected".

The assignment of errors contains sixteen assignments of error, and the brief of defendant does not contain any specification of errors at all, if Rule 24 be construed as requiring a specification of those errors contained in the assignment of errors on which defendant intends to rely on the hearing of the case, under a heading of "Specifications of Errors", and immediately following the statement of the case; if, on the other hand, the specifications may be scattered throughout the brief of defendant, as is done here, it is at least requisite under the rule that when the specifications relate to alleged errors in the admission or the rejection of evidence that the specification shall "quote the full substance of the evidence admitted or rejected", and that when the specifications relate to errors in the charge of the court that the specification "shall set out the part referred to totidem verbis". Tested by these requirements, defendant has failed to comply with the rule in specifying the errors on which it will rely, as to all of the alleged errors except the first specification, which is to the effect that the court erred in denying defendant's motion for a nonsuit. The second and third specifications are to alleged errors in instructions to the jury, and these speci-

cations do not set forth the portion of the charge referred to totidem verbis, and the fourth specification, being a blanket specification, consisting of four subdivisions, relating to alleged errors in the admission and rejection of evidence, does not quote the full substance of the evidence admitted or rejected, or indeed any of the evidence at all.

Defendant's specification No. 1 in its brief, is based upon assignment of error numbered IV (Trans. p. 208).

Defendant's specification No. 2 in its brief is based on assignments of error numbered X and XIII (Trans. pp. 210-211-212).

Defendant's specification No. 3 in its brief is based upon assignment of error numbered XII (Trans. pp. 211-212).

Defendant's specification No. 4 in its brief is based as to the first subdivision thereof, on assignment of error numbered II (Trans. p. 207), as to the third subdivision thereof, on assignment of error numbered V (Trans. p. 208), and as to the fourth subdivision thereof, on assignment numbered IX (Trans. pp. 209-210).

As to the second subdivision of specification 4, it finds no basis in the assignment of errors or in the bill of exceptions.

Assignments of error numbered II and III (Trans. p. 207) relating to alleged errors in the admission and rejection of evidence, upon which de-

fendant bases specifications of error, subdivisions (a) and (b) in its brief, are not framed in accordance with Rule 11, in that no part of the evidence admitted is quoted as part thereof.

It will thus be seen that defendant has almost completely failed to comply with Rules 11 and 24, and this court should not notice them, as the alleged errors are within the terms of the rules, and no excuse can be offered for failure to observe them.

The rules have been enforced in the following cases, where the object and purpose of them are clearly stated:

National Bank of Commerce v. First National Bank, 10 C. C. A. 89;

Supreme Council Catholic Knights of America v. Fidelity and Casualty Co. of New York, 11 C. C. A. 96-108;

Haldane v. United States, 16 C. C. A. 447;

Oswego Township, Labette County v. Travelers' Ins. Co., 17 C. C. A. 77;

Garrett v. Pope Motor Car Co., 168 Fed. 905;

Walton v. Wild Goose M. & T. Co., 60 C. C. A. 155; 123 Fed. 209.

Plaintiff will consider all of the specifications noted in the brief of defendant, in the order in which they are set forth in the brief of defendant; it being understood by plaintiff that all alleged errors not noted in the brief, although assigned in the assignment of errors, are abandoned by the defendant.

### Argument.

The principal error of law, relied on by the defendant for a reversal of the judgment, is "that the court erred in denying the motion of the defendant for a nonsuit, made by the defendant to the first cause of action set forth in the complaint, to which defendant's Exception No. 7 was taken". This specification is based upon assignment of error numbered IV (Trans. p. 208).

Defendant devotes all of its brief from the bottom of page 11 to the top of page 27, and a portion of pages 42 and 43, to the consideration of this question.

The record shows that this motion for a nonsuit was made by the defendant, at the close of the plaintiff's evidence in chief (Trans. pp. 92-93); that the defendant, instead of resting upon its exception to the denial of the motion, proceeded to introduce evidence in support of the issues raised by the complaint and answer (Trans. pp. 93-166).

Under the circumstances, the rule is settled in the federal courts that the exception will not be reviewed, as it is deemed to be conclusively waived by the conduct of the defendant.

- R. R. Co. v. Hawthorne, 144 U. S. 202;
- Walton v. Wild Goose M. & T. Co., 123 Fed. 209; 60 C. C. A. 155;
- Bogk v. Gassert, 149 U. S. 17;
- Union Pacific R. Co. v. Callaghan, 161 U. S. 95.

The defendant failed to renew its motion for a nonsuit at the close of the entire evidence in the case, or to ask at that time for a directed verdict in its favor, on the ground that the evidence adduced by plaintiff was not sufficient to entitle it to a verdict (Trans. pp. 18; 193-195), and in the absence of such a motion for a directed verdict by the defendant, this court cannot review the evidence to determine whether it supports the verdict.

Oswego Township, Labette County v. Travelers' Ins. Co., 17 C. C. A. 77; 70 Fed. 225;  
Village of Alexandria v. Stabler, 1 C. C. A. 616; 50 Fed. 689;

Insurance Co. v. Unsell, 144 U. S. 439;  
Insurance Co. v. Frederick, 7 C. C. A. 122;  
58 Fed. 144;

Mining Co. v. Ingraham, 17 C. C. A. 71; 70 219;

Joplin & P. R'y Co. v. Payne, 194 Fed. 387.

In other words, it results from the law, as laid down in the cases above cited, that defendant in the present state of the record cannot raise the question in this court, as to whether the court erred in denying its motion for a nonsuit made by it at the close of plaintiff's evidence in chief, or as to whether the verdict is supported by the evidence. The verdict is conclusively deemed to be supported by the evidence, and unless defendant can point out some prejudicial error of law, either in the admission or rejection of evidence, or in the charge to the jury, the judgment must be affirmed.

Assuming that the defendant could now take advantage of this ruling of the court denying its motion for a nonsuit, the ruling was in all respects correct. Plaintiff, in support of the first and third counts or causes of action, stated in the complaint, adduced evidence tending to prove that he had hired and got together one hundred and forty (140) men, pursuant to the contract, 57 per cent being Chinese, giving the list of the Chinese crew sent to defendant's cannery, with the name and station in the cannery of each man (Trans. pp. 72-73); that all the men on the list were experienced men in the cannery business, and had worked in the business many years; that the crew of 140 men were made up of 81 Chinese, including three testers, 49 Japanese, and 10 Mexicans; that they went on the vessel provided by the defendant at the port of San Francisco, about the 10th or 11th day of April, 1910, and were taken to the defendant's cannery, at Nushagak, Alaska, where they worked the entire season, and packed about 44,000 cases of salmon; that this crew packed all the salmon that the defendant furnished or delivered to the plaintiff to pack during the season; that the pack was taken at the end of the season on board of defendant's vessels, and was subsequently disposed of by the defendant; that after the return of the crew, the plaintiff demanded of the defendant the money due under the contract, and the same was refused.

This evidence tended to prove every term, stipulation and covenant in the contract on the part of

the plaintiff to be performed; the contract provided that the plaintiff should furnish and place aboard the vessel to be provided by the defendant, at the Port of San Francisco, on or about the 12th day of April, A. D. 1910, not less than 140 competent men, 57 per cent being Chinese, including three testers, to prepare and put up every working day during the term of the contract, all the fish that could reasonably be expected to be had at the cannery, at Nushagak, District of Alaska, say 2700 cases, or more, if possible; plaintiff agreed to receive the fish on the wharf at Nushagak, to clean and prepare them in the fish-house for canning, and transport them to the cannery; to make all the cans by can seaming machines only, the bottoms and tops, or whatever may be required; all cans to be wiped and capped by machinery; to salt, fill, solder, bath, wash, pile, label and put in cases, and nail up the entire pack of the season. All swelled cans in excess of four (4) cans per hundred (100), all light cans, all cans collapsed, burst or deficient in seams (where any of said faults or defects were the result of want of skill of plaintiff), were to be paid for by plaintiff at the rate of six (6) cents per can; all leaks were to be mended by skilled labor daily by plaintiff, and mended cans were to be accepted or rejected according to the condition of the fish, and if they were not so mended daily, the plaintiff agreed to pay to the defendant the sum of \$3.00 per case; all work was to be done under the direction and supervision of the superintendent of the can-

nery, and to his entire satisfaction, and was to be done with the utmost diligence, speed and care, and in the most complete and workmanlike manner; defendant agreed to pay plaintiff the sum of 55 cents for each and every case containing four (4) dozen tall cans of one pound each, when filled by the Jensen can-filling machine, and 60 cents per case of four dozen tall cans each, the cans of which were filled by hand, when caused by the failure of the Jensen can-filling machines to work; defendant guaranteed the pack at the cannery to reach 66,000 cases, and agreed, if the amount was less than that, to pay the plaintiff, the same as if the pack had been that amount; if over 66,000 cases, each case was to be paid for at the price agreed upon in the contract; and it was expressly understood that the plaintiff was to put up not less than 2700 cases of fish per working day, provided he was furnished with the necessary fish for that purpose, by the defendant; in default thereof, plaintiff agreed to forfeit to defendant one (\$1.00) dollar per case.

The only stipulations under the contract that are to be regarded as conditions precedent to recovery by plaintiff are, that the plaintiff should place aboard the defendant's vessel, at the time appointed, the 140 men, made up as required by the contract, that is 57 per cent being Chinese, including 3 testers, all of the crew to be competent men; that they should go to defendant's cannery at Nushagak, in the District of Alaska, and there work the entire season of 1910, and make the pack of fish furnished

by defendant; whether the prima facie case of plaintiff showed that the plaintiff failed to pack a certain quantity of fish delivered to him for packing, or spoiled certain canned fish during the season, was not, even if we assume that the evidence tended to show such facts, sufficient under the contract to either justify or require the court below, to hold that the plaintiff had failed to make a case to go to the jury; it was expressly agreed that the plaintiff was only required to pack 2700 cases of fish per working day, in case he was furnished with the necessary fish by the defendant for that purpose, and in case he made default in that particular, it was stipulated that he was to forfeit to defendant the sum of \$1.00 per case; that is, in case defendant should show that it had furnished sufficient fish to have enabled the plaintiff to pack 2700 cases per day, the plaintiff would pay to the defendant, \$1.00 per case for each case of fish so delivered to him by the defendant that he should fail to pack; by the terms of the contract, therefore, it was stipulated in advance by the plaintiff and defendant, that it was not a condition precedent to a recovery by plaintiff that he should pack all of the fish that the defendant might deliver to him, to the extent of 2700 cases per day, but, on the contrary, it was stipulated that for any breach in that particular, the defendant might deduct from the amount due to the plaintiff under the contract, the sum of \$1.00 per case, and defendant, acting on this theory, set up as an affirmative cause of action the alleged

failure of plaintiff to pack 31,698 fish that it claimed, in its counter-claim, to have delivered to the plaintiff for canning.

The same considerations apply with respect to the alleged spoiling of canned salmon, shown by the testimony of Kep Yung, the Chinese foreman of plaintiff, to have been left at the cannery.

The contract provided in that respect as follows:

“All swelled cans, in excess of four (4) cans per hundred (100), all light cans, all cans collapsed, burst or deficient in seams (where any of said faults or defect are the result of want of skill of the party of the first part), to be paid for by the said party of the first part at the rate of six (6) cents per can.

“All leaks to be mended by skilled labor daily, by party of the first part, and said mended cans to be accepted or rejected according to the condition of the fish, and if not so mended daily, the party of the first part agrees to pay to the party of the second part, the sum of \$3.00 per case.”

The court below instructed the jury without objection on the part of defendant, that the counter-claims of defendant, setting up these alleged claims of damage against plaintiff, were affirmative causes of action by defendant against plaintiff, and that as to them, the burden of proof was on the defendant, thus adopting the theory of law laid down by the contract itself, and the entire argument of defendant on this point is answered by the suggestion that any evidence contained in the testimony of Kep

Yung tending to show any default on the part of the plaintiff, either in failing to pack any fish delivered to him by the defendant, or in the spoiling of fish after they were canned, was merely in support of the counter-claims of the defendant.

Even if it be assumed that it was a condition precedent to the right of the plaintiff to recover that he should show in his *prima facie* case, that he had not failed to perform the contract strictly and literally, in the respects mentioned (and the defendant does not claim that he made default in any other particular), it having been shown that the defendant took, accepted and received the benefit of the contract by accepting the pack made by the plaintiff thereunder, it cannot prevent the plaintiff recovering on the contract, but its remedy is restricted to a recoupment of the damages alleged to have been suffered by it for any failure of the plaintiff to perform the stipulations of the contract on his part to be performed.

Kauffman v. Raeder, 108 Fed. 171; and cases cited;

German Savings Inst. v. De La Vergne Refrigerating Machine Co., 70 Fed. 146-150; 17 C. C. A. 34-38; and cases cited;

Wiley v. Athol, 150 Mass. 435.

As part of defendant's argument that its motion for a nonsuit should have been sustained, this paragraph occurs:

“It is also submitted that the instruction requested by defendant (p. 212) to the effect that the plaintiff could not recover upon the first cause of his complaint should have been given.”

This exception is assigned in defendant's assignment of errors, and numbered XIV (Trans. p. 212).

This alleged error is without any basis in the record or bill of exceptions; the alleged requested instruction is not set out, as required by Rules 11 and 24 of this court; the only exceptions taken to the action of the court below in its instructions to the jury are to be found on pages 193, 194 and 195 of the transcript; it does not appear either that this or any instruction of the kind was either requested, or that there was any exception taken by the defendant to the court's refusal to so instruct. This assignment cannot be noticed by the court.

T. & P. R'y v. Volk, 151 U. S. 77;

Western Union Telegraph Co. v. Baker, 85 Fed. 690; 29 C. C. A. 392 (9th Circuit);

Merchants' Exch. Bank v. McGraw, 22 C. C. A. 622-627 (9th Circuit);

Star Co. v. Madden, 110 C. C. A. 652.

A great deal is said in defendant's brief concerning the evidence tending to show inadequacy or the improper condition of the machinery in defendant's cannery, brought out in the testimony of Kep Yung, which was at the close of the testimony of Berglund, the first witness called by the defendant, stricken out by the court.

It is first urged that this evidence being stricken out, there remains but a few words to sustain plaintiff's case in chief (brief, p. 14). Plaintiff is at a loss to know what connection can possibly exist between the existence or non-existence of the evidence relating to the machinery in the record, and the question as to whether plaintiff's evidence was sufficient to make a *prima facie* case. What allegation in the complaint is affected by the presence or absence in the record of the evidence concerning the machinery?

It will be shown hereafter in dealing with this question that defendant has failed to assign any error with respect to the court's rulings concerning the machinery, and that the evidence respecting it was properly admitted.

The remainder of the argument of the defendant upon the exception to the denial of its nonsuit is in substance addressed to the proposition that the verdict of the jury disallowing the claims set up by it in its counter-claims was either against the evidence or not sustained by the evidence. This objection is one which, as has been shown, cannot be availed of by the defendant. Defendant made no motion for a directed verdict in its favor with respect to the affirmative causes set up by it in its counter-claims, but went to the jury on the evidence introduced by both parties on the issues raised thereby. The verdict, moreover, was fully justified by the evidence.

Defendant set up the following claims under the contract against plaintiff:

(a) That the defendant was compelled to and did dump and destroy 31,698 salmon fish that defendant "*had caught and delivered*" at defendant's cannery, and which the plaintiff was required to pack under the agreement; that said salmon were reasonably worth the sum of \$1911.39, and that defendant was thereby damaged in that amount (Trans. pp. 58-59).

(b) That by reason of the shortage of men, and the incompetence and unskilfulness of the men furnished by plaintiff, the plaintiff was unable to handle the quantity of fish supplied to him, and by reason thereof defendant lost 36,600 fish that otherwise would have been caught and supplied to the plaintiff for canning, and that defendant was thereby required to pay its fishermen the sum of \$2206.98, which it was compelled to pay the said fishermen for the said 36,600 fish which they would have caught had they not been put upon a limit (Trans. pp. 59-60).

(c) Afterwards in the answer, defendant consolidated and united both of the foregoing causes of counter-claim, and alleged that it was provided in the contract that the plaintiff should put up not less than 2700 cases of fish per day provided he was furnished with the necessary fish for that purpose by the defendant; that between the 2nd and the 13th days of July, 1910, both dates inclusive, de-

fendant furnished to plaintiff the necessary amount of fish each day to enable the plaintiff to can for defendant 2700 cases per day; that by reason of the incompetency and unskilfulness of plaintiff's men, plaintiff did not perform his contract by canning 2700 cases per day, but during such time failed to pack 6,376 cases, whereby defendant was damaged in the sum of \$12,178.16 (Trans. pp. 64-65).

(d) That by reason of the carelessness, negligence and incompetency of plaintiff's crew, 2045 cases of canned salmon were improperly packed and spoiled to the loss and damage of defendant in the sum of \$11,043.00 (Trans. pp. 60-61).

Considering defendant's claims embodied in counter-claims (a), (b) and (c), with respect to the alleged failure of plaintiff to pack the fish therein referred to, it will be observed that they constitute affirmative causes of action by the defendant against the plaintiff on the contract; the court below on the trial and in its charge to the jury ruled that the burden of proof was on the defendant to establish these counter-claims (Trans. p. 188).

The testimony of defendant's witnesses, Jonsson, the cannery bookkeeper of defendant, and Berglund, its superintendent, the only witnesses of defendant that testified on the subject of fish deliveries, was as follows:

Jonsson testified that the plaintiff packed and canned all of the fish that the defendant delivered

to the plaintiff for canning during the canning season of 1910, except this 31,698 fish.

Testimony of Jonsson (Trans. p. 143):

“Q. Did he pack all the fish that were not thrown away, between that period, between the 1st and the 13th?

A. All the fish?

Q. Yes, all the fish that were not thrown away?

A. I could not tell how much more was thrown overboard, but I know there were 31,698.

Q. Your books show 31,698 were thrown away; now, did they pack all but that?

A. Yes.”

And again the same witness said:

“Q. You have no idea then above and beyond the 31,698 salmon fish which you claim were actually thrown overboard? You have no idea as to how many more were thrown overboard, have you?

A. No, I have not.

Q. In other words, you could not swear as to whether another fish was thrown overboard?

A. Yes, I could swear to that. I seen some fish thrown overboard.”

Witness continuing:

“I went by the cannery and I have seen the man throwing them overboard, and I never stood there and looked at him. All the fish I have record of that the Chinamen failed to pack under their contract were the 31,698 fish dumped and the 36,600 fish that the fishermen did not catch. To my knowledge the 31,698 fish are all the fish that were dumped between the 2nd and the 13th of July. The 36,600 salmon were never caught” (Trans. pp. 142-143).

This evidence accords with the claims of defendant in its counter-claim, and Mr. Jonsson stated in his testimony that this 31,698 fish thrown away was that referred to in the bill or account sent to the plaintiff by the defendant, wherein it makes claim for this 31,698 fish dumped. It is the same salmon that I have testified to as having been dumped. It is precisely the same amount. There are two items there, the first 23,619 and the next one 8079 (Trans. p. 138).

Some of these fish were thrown away. On the 8th there were 23,619; and on the 9th there were 8079. They were thrown away because we had too much fish on hand and we could not pack them (Trans. p. 136).

The fish were dumped from the lighters. They were never put on the fish dock. We had fish enough on the dock and we could not take them off.

The Chinese had no control of the tally of the fish, except as they might ask how many fish we had on the dock. They usually do ask how many fish we have on the dock. They have nothing to do with the tally (Trans. p. 146).

“Q. I would like you to point out in the book the items showing that destruction of 31,698 salmon, the amounts and the days of the destruction of the 31,698 salmon.

A. Here is one item.

Q. What day is that?

A. That was on the 6th, from Koggiung.

Q. Just explain that please. I cannot understand it. Explain that entry.

A. This is the tally book that I received of the men as to the fish. Here are the number of the men here, and the number of fish for each fisherman.

Q. Where is the amount dumped shown?

A. The total is here. And here is 1000 on this side; it makes 8079.

Q. 8079 fish dumped?

A. Dumped from that lighter.

Q. What day was that?

A. It was dumped on the 8th.

It was dumped at the order of Mr. Berglund. I have the memorandum in my own books. That was on the 9th. That is the original book. The dumping was always done at the cannery. The scows were lying just outside the fish dock. Mr. Berglund must have been there and gave the order. (Trans. pp. 147-148.)

Witness continuing:

We received a scow, the fish was on there and it was dumped overboard. We threw overboard all the fish on the scow. We knew the amount of fish on the scow. We kept the scows numbered. That is the only way we can keep track of that. I have the original book right here. Here is one, fish received on the 6th, from scow No. 6, and here is the amount 15,180; everything was dumped. I know some of the scows were dumped. I was down on the fish dock probably 4 or 5 hours a day looking after it.

All the fish in those lighters were thrown overboard. We had too much fish on hand, so much on hand that we could not pack it, and they were getting too old. And those were hot days up there too. (Trans. p. 148.)

We do not want to get too many fish. We try to keep about two days ahead when there is a heavy run.

Q. How do you know that that fish was dumped?

A. I know that we did not receive it on the dock. This scow was lying right alongside of the dock, about 15 or 20 yards from the side of the cannery.

The scows came in and there were so many fish on each scow and those fish were thrown overboard; they never entered the cannery. That is the reason that we could keep track of them. (Trans. p. 151.)

The 31,698 were all thrown from the lighters." (Trans. p. 152.)

Berglund testified with respect to these fish:

"Q. How many fish during this run from July 2 to July 13, 1910, did you have delivered at the cannery there each day?

A. I cannot tell exactly, but the books will show exactly the number. I had to curtail the catch from that on. (Trans. p. 97.)

We had to throw some fish away because we could not put them up and they got too old. Under the Government law and regulation we can keep fish 48 hours after they are caught, and before they are canned. I cannot tell the exact number of fish that were thrown away. The book-keeper kept a record of that. He is present here. The fish we threw away were good red salmon. \* \* \* The fish when they were thrown away were on the lighters. We kept them approximately 48 hours before they would be thrown away. (Trans. p. 102.)

The biggest portion of the fish thrown away between July 2d and July 13th, 1910, were thrown from the lighters. There were three lighters. I don't know the exact percentage. *One day there were thrown away about 60,000 fish from the lighters.*

Q. They were not delivered to the cannery?

A. They were delivered in the lighters to the cannery, but I had to take them out—

Q. (Interrupting.) But they were not put in the fish dock of the defendant?

A. No.” (Trans. p. 110.)

Witness continuing, on cross-examination:

I have testified on direct examination that I had sufficient fish to enable the plaintiff to pack 2700 cases of fish per day provided I had all the fishing boats fishing. \* \* \* I did not have all the boats out fishing, of course. I did not know that they were not unable to get away with the fish. I supposed they were able to. I think I directed the fishermen to go out and get more fish whenever we were cleaning up in the cannery. I was afraid of getting too much and we would have to throw them away.

Q. Did you have any ground for your fear when there were only 600 cases delivered there in one day?

A. We had more fish on the dock; we had plenty of it. The dock don't hold so much; it holds several days. The lighters we had fish in. We elevate them up into the fish house; that is done easily. We can keep a reserve in the scows from one day to the other. (Trans. p. 112.)

Q. And it appears from your own books here, that on the 8th, 9th, 10th, 11th, 12th, and 13th you restricted the catch of fish for this cannery. Now, what do you say, what is your explanation for that conduct?

A. Because we had too much; we could not handle any more.

Q. Well, I have called your attention to the fact that on the 11th day of July you only had 8,027 fish delivered at that cannery.

A. Yes, but you must remember we had fish on hand from days before.

Q. I called your attention that on the day before there were 27,244 fish delivered into the cannery; that was not sufficient to pack more than—

A. We had all the fish. What the books show makes no difference; and we had more than we could handle during those days.

Q. Do you contradict your own books?

A. Well, I saw it with my own eyes.

Q. You have testified that as to every day between the 2nd and 13th of July there were sufficient actually delivered into the fish bins of the company to enable the plaintiff to put up 2,700 cases of salmon.

A. I did not say that.

Q. I understood you to say that on direct examination.

The COURT. Your counsel asked you in a very general way, it is true, during that run did you have sufficient fish delivered to enable this plaintiff to pack 2700 cases a day, and you said yes.

A. My meaning of that was that I had at the beginning—I thought that I explained that before—until I saw we could not get away with that many, and then I had to reduce it to just the amount we could handle.” (Trans. pp. 113-114-115.)

The above is all of the evidence respecting the dumping of these 31,698 fish, how, when and where they were dumped.

The defendant alleged, both in counterclaim (a), and in its united and consolidated cause of counterclaim (c) that it had furnished this fish to the plaintiff; the contract provides that the plaintiff “agrees to receive the fish on the wharf at Nu-

shagak", and the defendant undertakes to furnish and deliver it there to the plaintiff;

The defendant tried its case upon the theory as alleged in its counterclaim that it had furnished this amount of fish to the plaintiff for canning; and that was the issue submitted to the jury (Trans. p. 184).

It will thus be seen that the defendant failed to prove the essential allegation of its counterclaims that it had delivered this fish to the plaintiff.

Under counter-claim (b) defendant claims to recover from the plaintiff the sum of \$2206.98, alleged to have been paid by it to its fishermen for 36,600 fish that they would have caught, had not the defendant been compelled to place them upon a limit by reason of the incompetence of plaintiff's crew, whereby they were unable to handle the quantity of salmon supplied them for canning, or to pack 2700 cases of fish daily as required by the contract (Trans. pp. 59-60).

The evidence as to this claim of defendant shows that the defendant was, under its contract with the fishermen employed by it, to pay its fishermen three (3) cents per fish for all salmon caught and delivered by the fishermen to it, and at this rate, the aggregate amount of damages under this claim would amount to \$1098.00, if the defendant had sustained it before the jury; a calculation however, based upon the catch of fish made by the boats actually fishing on the 8th, 9th, 10th, 11th, 12th, 13th

and 14th days of July, the days that certain boats were put upon a limit, shows that the boats taken off by the imposition of the limit would not have caught more than 27,226 fish, which at 3¢ per fish would have amounted to \$816.78; the evidence of the defendant was to the effect that:

“The defendant paid the fishermen \$2206.98 concerning an item of 36,600 salmon, on account of limits at 6.3¢. It had no reference to the number of fish which the defendant caught, or which they did not catch. It was simply an arbitrary sum that we were compelled to pay them on account of this limit” (Trans. p. 158).

Although the same witness before that testified as follows:

“At the commencement of the season we had 33 fishermen’s boats working for the cannery, two men to a boat. They are paid 3¢ for each red fish. We have to furnish them a guaranty that if we take any boats off and take a man in the cannery we have to pay them for 1200 fish, —\$18 per day each, or \$36 for the boat” (Trans. p. 136).

Defendant did not ask to go to the jury on this claim, but on the trial insisted, and the court submitted the issue to the jury, that it had actually delivered these 36,600 fish never caught by the fishermen, to the plaintiff for canning, under its counterclaim (c) (Trans. pp. 184, 191). It abandoned its claim to recover the damages measured by what it was required to pay to the fishermen by placing them upon a limit and thereby preventing them from catching this lot of 36,600 fish, which sum

would not have been more than \$1098.00, but under its counter-claim (c) claimed to recover as against the Chinaman for failure to pack some 6376 cases of fish for which it sought to recover damages as against plaintiff in the aggregate of \$22,060.16. This 6376 cases was based upon the 31,698 salmon fish which had been dumped as shown above in this brief and not delivered to the plaintiff for packing, and this claim of 36,600 fish, not caught or delivered; defendant claimed before the jury that it had actually delivered to the plaintiff for packing both the 31,698 fish which it had thrown overboard from the scows or lighters and the 36,600 fish which had never been caught. It is easy to see why defendant took this course. The amount of damages properly recoverable for this item of 36,600 fish could not have exceeded the sum of \$1098.00 and the only possible way that it saw to claim profits and actual damages by reason of these alleged defaults was to claim that the fish had been actually delivered. The sole foundation in the evidence to support its united and consolidated counter-claim, by which it sought to recover damages in the sum of \$15,684.16 as against the plaintiff, were these two items. And the statement in defendant's brief, on page 46, that the uncontradicted evidence shows that the plaintiff fell short in his pack of 6376 cases finds no support in the evidence. Mr. Gregory admitted on the trial that the attempt to recover for the fish dumped and for the fish not caught and also for the cases was a double charge (Trans. p. 145).

As for defendant's counter-claim (d) under which it sought to recover for 2045 cases of spoiled canned salmon left at the cannery, the evidence of the plaintiff was to the effect that there were no more than 400 or 500 cases left there spoiled. The evidence showed that there was considerable good salmon in the amount left. The explanation of plaintiff for leaving it there was that the defendant did not give plaintiff's men either the proper length of time or the proper facilities for mending it, and the jury, by their verdict, affirmed this view. It may be further stated as to this claim that by reason of defendant's evidence that there were a large number of good cans in the salmon left at the cannery, the jury were unable to determine as to the exact amount of spoiled salmon, if any, for which the defendant, if not in fault, might hold the plaintiff. The burden of proof was on the defendant as to this claim and the court so charged the jury and it failed to sustain the burden. With respect to all of the three claims, to wit: the claim for the 31,698 salmon dumped from the lighters and the 36,600 salmon not caught and this claim for spoiled canned salmon left at the cannery, the court below would have committed no error under the evidence, if it had directed a verdict as against defendant and in favor of the plaintiff on all these claims.

THE COURT BELOW DID NOT ERR IN DIRECTING THE JURY THAT THE WORD "FURNISH", AS USED IN THE INSTRUCTIONS AND IN THE CONTRACT, MEANS "DELIVER".

Defendant's second specification of error is that the court erred in instructing the jury that the word "furnish" as used in the instructions means "deliver" (brief, pp. 27-33).

The instruction of the court was as follows:

"One of the questions in the case which has given rise to considerable evidence and controversy is the question as to whether a sufficient number of fish were supplied by the defendant to the plaintiff to pack the number stipulated in the contract, to wit: 2700 cases per day. Now, you will review the evidence carefully in your minds and determine whether it has been shown on the part of the defendant in its counter-claim that this contract has not been carried out, that it did furnish sufficient fish to enable the plaintiff to pack the number of cases required by the contract, and if it did, and through the failure of the plaintiff, and without fault on the part of the defendant, the plaintiff has failed to pack that number of fish, why then, of course, as I have heretofore instructed you, the plaintiff will have been shown to have breached this contract, to have failed to fulfil it, and the result would follow which I have already indicated.

"And in that connection, as has been argued to you by counsel, fish are only delivered under this contract by the defendant to the plaintiff if they are delivered in the manner and at the place designated in the contract, and, as I have suggested, with the terms of that contract you are familiar and you will recall where it was required that these fish should be delivered" (Trans. p. 191).

Upon the exception of plaintiff the following proceedings took place:

"Mr. GREGORY. \* \* \* We except to the instruction that we were to deliver to the cannery at the place named; the word used in the contract is that we 'furnish' the fish to the plaintiff.

"The COURT. Well, I will substitute the word 'furnish'. The word 'furnish', however, means 'delivered'. My interpretation of the contract would be that the fish must be delivered at the cannery in such a way as was stipulated and in accordance with the terms of the contract.

"Mr. THORNTON. And, if your honor please, the contract says that the plaintiff will receive the fish at the dock.

"Mr. GREGORY. It does not say on the dock, it says the defendant shall furnish the plaintiff with the fish.

"The COURT. The word 'furnish' means delivered, that is, in accordance with the terms of the contract" (Trans. pp. 194-195).

The contract provides that

"the party of the first part (plaintiff) agrees to receive the fish on the wharf at Nushagak, to clean and prepare them in the fish house for canning (it being understood that the scales are to be removed from the fish) and transport them to the cannery" (Trans. p. 15).

The obligation of the plaintiff under the contract being to receive the fish on the wharf, the correlative duty of the defendant was plainly to furnish them at that place, and to furnish the fish on the wharf necessarily means to deliver them there. Defendant alleged in its counter-claims (a) and (c) that

it had delivered the 31,698 salmon fish and the 36,600 salmon not caught, for the failure to pack which it sought damages against the plaintiff, and the evidence as admitted by the defendant in its brief, shows as to the 31,698 fish that they were thrown overboard, or dumped from scows or lighters, moored near to the wharf of defendant's cannery, and that as to the 36,600 fish that they were never caught or delivered. Defendant's contention in its brief is in effect that readiness or ability to furnish or deliver these fish on the wharf constituted a furnishing or delivery of them there. If defendant desired to prove circumstances excusing delivery of this fish under its contract it must have pleaded the necessary facts under which it could make this proof.

Russ v. Daly, 86 Cal. 115.

This it failed to do as to counter-claims (a) and (c) although it did plead the necessary facts under counter-claim (b) but on the trial it abandoned that counter-claim. The entire contract shows that the construction placed upon it in this particular in the instruction was the true one. The act of delivery or furnishing was to be done by the defendant at the designated place and it had full control over the furnishing or delivery, and the plaintiff was not concerned with the fish until actual delivery had taken place when his duty to deal with it first arose. It appears in the evidence that the fish was delivered on the wharf from the scows or lighters by means of elevators. The evidence shows that the

plaintiff had nothing to do either with the tally or delivery of the fish and there is not a syllable in the evidence that the Chinese foreman of plaintiff, the only representative of plaintiff at the cannery, was informed that these fish were in the scows or lighters near the cannery, or that defendant intended to throw them overboard, nor was such representative given an opportunity either to count the fish, or to inspect their condition. And finally, in this connection, it cannot be contended under any possible construction of the contract that throwing or dumping the 31,698 fish into the waters of Bristol Bay could constitute a delivery to the plaintiff.

The interpretation of counsel for defendant,

“That the instruction given as explained by the statement of the trial court to the effect that ‘the word furnish means delivered’ placed before the jury the necessary conclusion that it was necessary for the defendant, in order to comply with the terms of its contract, to have at all times in its fish bins fish sufficient to pack 2700 cases, although plaintiff was unable to handle the fish that were actually in the bins”,

in view of the language of the instruction and whether explained by the statement of the trial court to the effect that “the word furnish means delivered”, or not, is untenable. The instruction had relation to the 31,698 salmon fish dumped from the lighters and the 36,600 fish not caught, which the defendant claimed it had delivered to the plaintiff for canning, and told the jury that to constitute a

delivery under the contract the fish must have been furnished at the place designated by the contract.

The instruction quoted on page 23 of defendant's brief and based on assignment of errors numbered XV (Trans. pp. 212, 213), was neither requested, nor was there any exception to the refusal to give the same. It has no basis in the bill of exceptions. The only exceptions taken by the defendant to the instructions given by the court are contained on pages 193, 194 and 195 of the transcript and a reference to those pages will show that no such instruction was either requested by the defendant, or exception taken to the refusal to so instruct.

The instruction, however, shows conclusively, if it can be looked at by this court for any purpose, that the defendant claimed that the 36,600 fish, not caught or delivered, by reason of putting the fishermen on limits, were in fact delivered to the plaintiff and that he was responsible for the failure to pack them. This claim would appear to be incredible but for this instruction.

Under the pleadings alleging actual delivery of these fish not caught or delivered, and furnishing and designed to furnish a basis for heavy damages against the plaintiff, to have given this instruction would have been grossly erroneous.

THE COURT DID NOT ERR IN INSTRUCTING THE JURY IN THE  
TERMS SHOWN BY DEFENDANT'S THIRD SPECIFICATION  
OF ERROR.

Defendant's third specification of error is "The  
" court erred in instructing the jury that they may  
" take into consideration the usual loss resulting  
" from spoiled cans that occurs in operations of the  
" kind in question" (brief, pp. 34-35). This speci-  
fication is based upon assignment of error number  
XV (Trans. pp. 212-213).

The exception taken by defendant is shown by  
the following proceedings at the close of the court's  
charge to the jury:

"Mr. GREGORY. If your Honor please, at this  
time we would like to take an exception to that  
portion of the instructions which says that de-  
bris cans which have been referred to could be  
considered a portion of the 2045 cases.

The COURT. What is that?

Mr. GREGORY. That the general loss of a can-  
nery can be considered a part of the 2045 cases.

The COURT. That is for the jury to deter-  
mine, whether they were a part of such loss, or  
not. You need not argue your exceptions, just  
simply state them.

Mr. GREGORY. I am simply stating my ex-  
ceptions. I am not attempting to criticize the  
instructions, I have no criticism to make about  
them" (Trans. pp. 193-194).

It needs no citation of authorities to prove the  
rule in this court that the defendant is limited to a  
consideration of the exception taken in the court  
below. It will be observed that the defendant  
makes no mention of the exception taken by it in

the court below, and the reason is quite apparent, for what took place shows that after he had stated his point of objection, and the court had informed him that he had not told the jury as a rule of law that the general loss of a cannery could be considered a part of the 2045 cases, but that "is for the jury to determine, whether they were a part of such loss, or not", defendant did not renew his objection, and did not suggest any such objection as the one now brought forward. The court told the jury by the instruction objected to, that they could consider certain evidence put before them as to the class of work in question in this case, and what was the usual result in putting up a large pack of fish, as to the number of cans or cases in a given number that will usually be spoiled or destroyed through one cause or another, and determine whether the loss of fish which has been testified to, that is, the loss in spoiled cans, was any more than the usual loss that occurs in operations of that kind, and that if they should find that the actual loss in spoiled cans was not more than was usual, then the plaintiff had performed his contract, and could recover on the contract, or the first cause of action in the complaint, rather than be restricted to a recovery upon the common count, the third cause of action stated in the complaint; as to which third cause of action the court had instructed the jury as follows:

"Under the contract, if performed by plaintiff, he was to be paid upon the basis of a pack of 66,000 cases, whether that number were packed or not; that being a guarantee given by

the defendant for plaintiff's benefit; and that is the basis upon which the balance alleged to be due plaintiff under the first count is estimated. But if the plaintiff has failed to fulfill the terms of the contract, then he can recover only for the number of cases actually packed, which is admitted to be 44,619, which, at the rate of 55 cents per case, would make the value of plaintiff's services under this count the sum of \$24,540.45, instead of \$36,300, as stipulated in the contract. Therefore, should you find that plaintiff has failed to fulfill his contract and is only entitled to recover the value of his services, your verdict would be for the sum made by adding \$24,540.45 and the item of \$1671.40 admitted to be due plaintiff under the second count, which is \$26,211.85, less the credits you may find the defendant is entitled to have deducted from that sum" (Trans. p. 183).

It will thus be seen that the portion of the instruction which the court actually gave merely told the jury that, if the plaintiff in performing the stipulations of the contract imposed on him had caused more loss to the defendant than was usual in operations of that kind, he could not recover upon the contract, but would be remitted to a recovery on the common count, the third cause of action in the complaint, and whereby he would be deprived of the benefit of the guarantee of 66,000 cases at 55 cents per case which, under the contract, he would be entitled to whether he packed that amount, or not. This was a more favorable instruction for the defendant than he had any right to expect, as the remedy upon the third, or common count, was in effect just as much upon the contract as the first

count, so far at least as concerned the compensation due him upon performance of the contract, in view of the stipulations in the contract by virtue of which every possible default which the plaintiff could commit in the execution of the contract was made by express agreement the subject of deduction by the defendant on the final settlement between the parties.

The argument of defendant is (brief, p. 35) that

“the instruction given conflicts with the contract in that the jury were told that they might take into consideration the usual number of cans that were spoiled or destroyed in the canning operations, while the contract provides for that inevitable loss by relieving the contractor *to the extent of four cans per hundred*”.

No such exception was taken by the defendant at the trial and we have seen, by reading the instruction, that its purpose was quite otherwise, and this is made fully evident by the following portion of the charge of the court below given to the jury:

“It is further claimed by defendant in its counter-claim that by reason of the inefficiency and careless work of the plaintiff’s men 2045 cases of salmon were totally spoiled and left at the cannery and could not be marketed. The contract required that the work should be done in a skillful and workmanlike manner by the plaintiff’s men, and with care and diligence, and to the satisfaction of its superintendent. Should you find that this or any number of cases of salmon were so spoiled and rendered valueless solely by reason of the neglect, unskillfulness or want of diligence of plaintiff’s men, and without the fault of defendant, then

defendant would be entitled under its counter-claim to the damages suffered thereby, and to be compensated for such loss in accordance with the terms of the contract. In that respect the contract provides:

“‘All swelled cans, in excess of four (4) cans per hundred (100), all light cans, all cans collapsed, burst or deficient in seams (where any of said faults or defects are the result of want of skill of the party of the first part), to be paid for by the said party of the first part at the rate of six (6) cents per can.

“‘All leaks to be mended by skilled labor daily by party of the first part, and said mended cans to be accepted or rejected according to the condition of the fish, and if not so mended daily the party of the first part agrees to pay the party of the second part the sum of \$3.00 per case’ ” (Trans. pp. 184-185).

“‘Under these provisions defendant would be entitled to a credit and recoupment against any amount found due the plaintiff, at the rate of six cents per can for all salmon so spoiled coming within the first of those provisions; and at the rate of \$3.00 per case for all coming within the second of those provisions’ ” (Trans. pp. 184-185).

Can anything be plainer in view of this instruction, that the court below took for its guide in charging the jury nothing but the express terms of the contract, and thereby left to the jury, as a question of fact, the liability, or the responsibility, for the damages flowing from this alleged loss of 2045 cases; giving to them the rule of law for fixing the damages in case they should find that the plaintiff was responsible for this 2045 cases, or any part thereof?

If counsel for defendant be right in his contention that the contract provides that the contractor shall be relieved of all responsibility for these 2045 cases to the extent of four (4%) per cent, or four (4) cans in every hundred (100), as is apparently stipulated in that clause of the contract quoted on pages 34 and 35 of defendant's brief, it furnishes another reason why this plaintiff should be relieved of responsibility to almost the entire extent of the 2045 cases. The pack made by the plaintiff, as claimed by defendant, was 44,619 cases. Jonsson, the bookkeeper of defendant, testified that the total number of cases packed by plaintiff was 44,619 (Trans. p. 134). On this basis plaintiff would be allowed 1785 cases of swells and deducting this allowance from the 2045 cases, alleged by the defendant to have been left at the cannery as swells, the balance is 260 cases, or 12,480 cans, which at six (6¢) cents per can amounts to \$748.80, and this leads plaintiff to call the court's attention, by a slight digression from the matter in hand, to the fact that all the claims of the defendant, as outlined in its counter-claims, would, if sustained, be as follows: for 31,698 salmon fish, which defendant dumped from the lighters, at three (3¢) cents per fish, the contract rate between the defendant and its fishermen, \$950.94; for 36,600 salmon, not caught or delivered, at three (3¢) cents per fish, the contract rate, \$1098; for 260 cases, swells, excess over allowance of four (4) cans per hundred, allowed plaintiff under the contract, \$748.80, making a total of

\$2797.74, as against the sum of \$35,207.33 (defendant's brief, p. 6).

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**THE ALLEGED ERRORS POINTED OUT IN BRIEF (pp. 35-42)  
ARE WITHOUT MERIT.**

Defendant, under the blanket specification of errors in the admission and exclusion of evidence, first complains that the court erred in permitting the sales account of defendant for the year 1910 to be admitted in evidence. We have heretofore pointed out to the court that neither in the assignment of errors nor in defendant's brief, has it properly assigned or specified this error. The reason and object of the rule is well illustrated here for, if the specification or assignment quoted the evidence and the exception taken thereto, counsel for defendant would hardly have the temerity to argue it (Trans. p. 207—assignment II; pp. 89-92).

The accounts were admitted to be the sales accounts of the defendant for the season of 1910, but were objected to as immaterial and that the price for which the salmon were sold was not in issue (Trans. p. 89).

(1) The objection that the accounts were immaterial is not available to the defendant, for the reason that it is in effect no objection.

Shandrew v. C. R'y Co., 73 C. C. A. 430.

(2) The evidence was admissible to show (a) performance by plaintiff of the contract sued on;

under the answer of defendant performance of the contract by the plaintiff was denied, and the accounts, admitted to be correct by the defendant, tended to show that the plaintiff had packed that amount of salmon; (b) to show that the defendant accepted the pack for that season, and that it was packed in accordance with the contract; (c) to show the amount of the pack that the defendant admitted the plaintiff had put up under the contract; (d) to show *prima facie* that the defendant took the benefit of the plaintiff's performance of the contract, and was therefore bound by its stipulations, and that the only remedy that was then available to the defendant for the violation of any stipulations of the contract, on the part of the plaintiff, was solely by way of recoupment, as alleged in its answer and counter-claims.

(3) The evidence was admissible under the common count, the third cause of action stated in the complaint, as showing that the defendant took the benefit of the contract by accepting the work, labor and services of plaintiff, and as showing further the degree and extent of the performance; this evidence was received by the court below while plaintiff was making his *prima facie* case, and was admissible for all of the purposes stated.

Under subdivision (2) of defendant's fourth specification, it is urged that:

“The court erred in overruling the motion of the defendant to strike out the answer given by the witness Kep Yung concerning the charac-

ter and the efficiency of the machinery of the defendant company (brief, p. 36)" (Trans. p. 81).

This specification is apparently based upon assignment of error numbered III, which is in the following words:

"That the court erred in overruling the motion of defendant to strike out the answer given by witness Kep Yung as a part of plaintiff's case in chief, concerning the machinery and the efficiency of the machinery of the defendant company, upon the ground that it was not within the issues made by the complaint, and to which ruling defendant's Exception No. 6 was taken, notwithstanding the fact that at a subsequent stage of the trial the said evidence was eliminated by the court" (Trans. pp. 207-211).

Plaintiff has already called the court's attention to the fact that neither in the assignment of errors, nor in the alleged specification of this error in the brief of defendant, which is apparently based upon assignment numbered III, above quoted, has the defendant set forth the full substance, or, indeed, any of the evidence claimed by defendant to have been improperly admitted. But, independent of this objection to the consideration of this specification, the assignment of error has no basis in the record; the assignment above quoted shows that the exception was to the action of the court in overruling the motion of the defendant to strike out the answer given by witness, Kep Yung, as a part of plaintiff's case in chief, concerning the machinery and the efficiency of the machinery of the defendant company, upon

the ground that it was not within the issues made by the complaint and to which ruling defendant's Exception No. 6 was taken. Defendant's brief on this point refers to page 81 of the transcript as showing the exception which, together with the evidence on which it was based, is as follows:

"Q. Did you have enough fish to can 2700 cases a day during that time?

A. Yes, there were enough fish, but it was beyond the capacity of the soldering machines.

Mr. GREGORY. I ask that the last portion of the answer go out as not responsive.

The COURT. I will let the answer stand.

Mr. GREGORY. We note an exception.

(Defendant's Exception No. 2.)"

It will be very readily perceived that this is not the exception referred to in the assignment of errors. The objection here is that the answer go out as not responsive and the assignment of error is predicated on an exception to the denial of a motion to strike out a certain answer of Kep Yung on the ground that it was not within the issues made by the complaint, and to which ruling defendant's Exception No. 6 was taken. The specification in the brief is to defendant's Exception No. 2. At the end of the testimony of the first witness called for the defendant, Berglund, the record shows:

"(At this point the court stated that he had become satisfied that under the pleadings the evidence on behalf of plaintiff already introduced tending to show inadequacy or the improper condition of the implements and the machinery which were afforded the plaintiff in

carrying out the contract was inadmissible, and that he should therefore eliminate the evidence put in by plaintiff upon that subject in the cross-examination of Mr. Berglund, and also in the testimony of Kep Yung, and this evidence was stricken out.)”

It appears that the motion to the overruling of which defendant excepted, and upon which assignment III is based, was granted by the court, and this would appear to be determinative of the matter and in the order striking it out, above quoted, it will be noticed that only the evidence of plaintiff on that subject was stricken out, leaving in all the affirmative evidence of Mr. Berglund to the effect that the machinery was in all respects perfect. Under these circumstances it would seem that the error, if any, was committed as against the plaintiff and not the defendant.

On the assumption that the matter is open for discussion and can be noticed by this court, it is plain that the evidence was admissible under the pleadings as responsive to the claims of damage set up by defendant in its counter-claims. It may be admitted that it was introduced out of order, which under all the authorities is a matter of discretion in the trial court, and not the subject of an exception on a writ of error, but it certainly was admissible and relevant as tending to excuse the plaintiff from any liability for moneys paid to the fishermen on account of limits, that is for the 36,600 fish not caught or delivered by reason of the alleged incom-

petency of plaintiff's crew in failing to handle the stipulated 2700 cases of fish per day, by reason of which it was alleged by defendant in its counterclaim that it was compelled to lay off its fishermen and thereby lost 36,600 fish, which they might otherwise have caught and delivered to the cannery.

Under the contract it was just as obligatory upon defendant to furnish machinery and equipment adequate to handle 2700 cases of fish per day, as it was for it to supply the material to be packed through the use of this machinery. The contract on its face contemplated the use of machinery by plaintiff in putting up the pack and there was an implied stipulation in the contract that the machinery and equipment should be reasonably adequate for the purpose of handling 2700 cases per day and that it should be kept and maintained in such a state of repair during the canning season as would permit of plaintiff's packing fish up to 2700 cases per day. Any evidence tending to show that the plaintiff was not responsible for any apparent default committed by him was admissible under the pleadings. On the trial the fault for failing to conform to the contract, if any there was, on the part of the plaintiff, was attributed by plaintiff to the incompetency of defendant's employees engaged in managing the canning operations and a careful reading of the transcript will show that there was an adequate basis for this claim. It was notably so in the case of Mr. Berglund placing and keeping his fishermen on limits for a period of seven days, when, for five

of those days, sufficient fish was not delivered to the cannery to enable the plaintiff to pack 2700 cases per day. Finally as to this evidence, it may be readily seen that it had and could have no effect upon the deliberations of the jury in view of the pleadings and evidence in the case. The entire stress of the case was on the affirmative causes of action set up by defendant and it has been heretofore shown in this brief that the court would have been justified, had it directed a verdict against the defendant, as to the 31,698 fish dumped, the subject of counter-claims (a) and (c), and as to the 36,600 fish not caught or delivered but which defendant urgently insisted before the jury had been actually delivered to the plaintiff. This evidence could not have affected the verdict on counter-claim (d) as it was not addressed to this issue.

By the third subdivision of specification 4 defendant contends that:

“The court erred in sustaining an objection to a question asked by defendant of its witness McGregor concerning the market price of Alaska red salmon in the year 1910 (Defendant’s Exception No. 8, p. 165)” (defendant’s brief, pp. 36-40).

The question as to whether the court ruled properly in excluding any evidence relating to the measure of damages for failing to pack fish, or for spoiled cans of salmon left at the cannery, has become entirely immaterial through the verdict of the jury. The jury by their verdict affirmed that the defendant on its counter-claims was not entitled to

any damages, and it has been held by the Supreme Court of the United States, and other courts of last resort, that any error in failing to properly give the measure or rule of damages to the jury under such circumstances was harmless and entirely immaterial.

Springer v. Cunningham, 204 U. S. 647, and cases cited;

Lovenguth v. City of Bloomington, 71 Ill. 241;

Brown v. St. L. I. M. & S. R'y Co., 52 Ark. 120;

Chicago & Indiana Coal R'y Co. v. Hunter, 128 Ind. 213;

Myers v. Wright, 44 Iowa 38;

Century Digest, Vol. 46, secs. 484, 1426 et seq.  
Title "Amount of Damages".

Defendant further urges under subdivision 4 of specification of errors in the admission and exclusion of evidence, that the court erred also in overruling an objection to a question asked by defendant of its witness Berglund, called in surrebuttal (p. 178), concerning the number of piles of cases of salmon that were left at the cannery when the ship sailed on its homeward voyage (brief, pp. 41-42).

This exception is the subject of assignment of errors No. IX (Trans. pp. 209-210). The court below, of its own motion, excluded this offered evidence on the ground that it was not proper rebuttal. Mr. Berglund whose testimony was excluded had already testified in full on the subject of the loca-

tion in the cannery of this alleged 2045 cases of canned salmon left at the cannery, and that it consisted of several piles. This testimony was given by Berglund upon the opening of defendant's case to sustain the allegations of counter-claim (d) (Trans. p. 98) where his testimony is as follows:

“When we left there at the end of the season there were cases of salmon left there, I counted about 2200, a fraction over; but it was impossible for me to get the exact amount. They were in cans, piled up on the floor, and in different places. 500 cases were in trays. They were in irregular piles so that I could not count them exactly, but I got what I consider a fair estimate.”

Other witnesses of defendant testified in chief that these alleged spoiled cans were in various piles. It was the duty of defendant, under the well settled rule of trial practice, that, if it deemed the alleged location in the cannery of the 2045 cases to be material or as to whether the alleged amount was in one or several piles, to adduce all its evidence on that point while making its case in chief. The question as to the location of this alleged amount of salmon was not the material matter for defendant to show. The material matter was the amount. This objection is trivial.

In conclusion plaintiff has, at considerable length, gone over the various matters urged by the defendant for the reversal of the judgment for the reason, not that the exceptions of defendant, when stated in accordance with the pleadings and the evidence had

any merit, but for the reason that this course was made necessary by the character of brief filed by defendant. The main point urged by defendant for a reversal is in effect an appeal to this court to review the evidence and determine therefrom that the jury did not reach the right conclusion, a matter which as shown has been foreclosed.

Plaintiff respectfully urges the court in this case to exercise the power which it has under Rule 30 of this court, which provides in subdivision 2, as follows:

“In all cases where a writ of error shall delay the proceedings on the judgment of the inferior court, and shall appear to have been sued out merely for delay, damages at a rate not exceeding ten per cent, in addition to interest, shall be awarded upon the amount of the judgment.”

It clearly appears that the writ of error has been taken for delay and for delay alone.

Dated, San Francisco,

October 28, 1912.

JOHN T. THORNTON,

*Attorney for Defendant in Error.*

No. 2173

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

ALASKA FISHERMEN'S PACKING  
COMPANY (a corporation),

*Plaintiff in Error,*

vs.

CHIN QUONG,

*Defendant in Error.*

BRIEF FOR PLAINTIFF IN ERROR, IN REPLY.

G. C. FULTON,

CHICKERING & GREGORY,

*Attorneys for Plaintiff in Error.*

Filed this.....day of November, 1912.

FRANK B. MONCKTON, Clerk

By.....Deputy Clerk.



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## BRIEF FOR PLAINTIFF IN ERROR, IN REPLY.

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### I.

#### ASSIGNMENTS OF ERROR.

It is urged that the plaintiff in error has failed to observe the requirements of Rules 11 and 24 of this court in the preparation of its assignments of error and of its brief, and cases are cited in which these rules have been enforced.

A brief reference to some of these cases will show the character of the assignments there considered.

Thus, in *National Bank of Commerce v. First National Bank*, 10 C. C. A. 89, 61 Fed. 809, the only assignment of error was as follows:

“First, the said circuit court erred in excluding legal and proper evidence offered by said plaintiff;

“Second, the said circuit court erred in admitting illegal and improper evidence offered by defendant.”

This, as was stated in the opinion, is “a patent and total disregard of the rule, as no error is set out separately and particularly”. Even in this case, however, the court said:

“The object of the trial of law suits however is to reach just decisions. The rules of the court are but aids to reach these results, and they should be enforced and applied in such a way as to attain them. That no injustice might be done in this case, we have carefully considered all the alleged errors referred to by counsel for plaintiff in his brief and in his argument, and we are of the opinion that there was no error in the trial of this case prejudicial to his client.”

The court thereupon proceeded to discuss at length the rulings of the trial court.

*Supreme Council &c. v. Fidelity & Casualty Co.*, 11 C. C. A. 96, 63 Fed. 48.

The assignment of error held too general in this case read as follows:

“The court erred in striking out the pleas to plaintiff’s declaration. They were competent

and proper, and available under the statute as notices of defense, at least.”

*Haldane v. United States*, 16 C. C. A. 447,  
69 Fed. 819.

The report of this case does not show the manner in which the assignments were taken. The court said there had been no attempt to comply with the provisions of the rules and for that reason they would not notice any of the exceptions as to the admission or exclusion of evidence. The case was, however, reversed on errors of law.

*Oswego Township v. Travelers' Insurance Co.*, 70 Fed. 225.

In this case the assignments were as follows:

“Comes now the defendant, and assigns the following errors against the plaintiff in this action: (1) Errors of law occurring at the trial, and duly excepted to by the defendant; (2) The court erred in admitting testimony by the plaintiff which was objected to and duly excepted to by the defendant. (3) The court erred in refusing to permit evidence to be introduced duly offered by the defendant. (4) The verdict is contrary to law. (5) The verdict is not supported by the evidence. (6) The court erred in instructing the jury to find a verdict for the plaintiff. (7) The court erred in rendering judgment for the plaintiff in this case.”

In *Garrett v. Pope Motor Car Co.*, 168 Fed. 905, the error assigned was as follows:

“(1) The court erred in ruling out evidence offered on behalf of plaintiff over the excep-

tions of plaintiff. (2) The court erred in the charge to the jury. (3) The court erred in refusing to charge the jury as requested. (4) The court erred in overruling plaintiff's motion for a new trial. (5) The judgment is contrary to the weight of the evidence. (6) The judgment is contrary to law. (7) The verdict should have been for the plaintiff, instead of for the defendant."

*Walton v. Wild Goose M. & T. Co.*, 123 Fed. 209.

In this case attention was called to the rule, but it nowhere appears in the opinion that the assignments taken were held insufficient. The case has apparently no pertinency to the point under discussion.

These are all the cases cited by defendant in error on this point. We think that the assignments and specifications noted in the present case at once show their inapplicability. They were cases where the only pretense of an assignment was in such general language as "The court erred in excluding proper evidence", or words to that effect.

We have divided our opening brief into five subdivisions, and the alleged errors in these five subdivisions are assigned as follows:

1. That the trial court erred in denying defendant's motion for a nonsuit to the first cause of action set forth in the complaint, to which Defendant's Exception No. 7 was taken. It is conceded by

defendant in error that this assignment complies with the rule. (Brief for defendant in error, p. 9.)

2. That the trial court erred in instructing the jury that the word "furnish" as used in an instruction means "deliver", and both in the brief and in the assignments of error the instruction is given *totidem verbis*, as required by Rules 11 and 24. (Record pp. 211-212, Assignments XII and XIII; Brief, pp. 27-28.)

3. That the court erred in instructing the jury that they may take into consideration the usual loss resulting from spoiled cans that occurs in operations of the kind in question. Here again the instruction is given *totidem verbis*, both in the brief and in the assignment of error. (Brief p. 34; Assignments of Error, p. 211.)

4. That the court erred in overruling the motion of defendant to strike out the answer given by the witness Kep Yung as a part of plaintiff's case in chief, concerning the machinery and the efficiency of the machinery of the defendant company, upon the ground that it was not within the issues made by the complaint, and to which ruling defendant's Exception No. 10 was taken, notwithstanding the fact that at a subsequent stage of the trial the said evidence was eliminated by the court (Tr. p. 207). The brief states that "The court erred in overruling " the motion of defendant to strike out the answer " given by the witness Kep Yung concerning the

“character and efficiency of the machinery of the defendant company (p. 81)”. The rule requires that the assignments of error show “the full substance of the evidence admitted or rejected.” This permits a reference to the substance of the testimony, and does not require it to be given *in haec verbis*.

This ruling on the answer of the witness Kep Yung was but one of similar rulings upon the same subject-matter (p. 84, Exception 3; p. 84, Exception 4). As this evidence proceeded, the following took place (pp. 85-86):

“COUNSEL FOR DEFENDANT. Your Honor understands that we have an objection to all this line of testimony, upon the ground that it is immaterial, irrelevant and incompetent, and not within the issues.

The COURT. Yes.”

If, therefore, it had been necessary, to properly assign this error, that all the evidence be quoted or specifically referred to, it would have been necessary to give each one of these questions and answers a particularity which it is submitted the rules do not require or favor. The substance of the testimony did “concern the machinery and the efficiency of the machinery of the defendant”, as stated in the assignment of errors and in the brief.

5. That the court erred in sustaining the objections of the plaintiff to the following questions asked by the defendant of the witness W. F. McGregor:

(Here questions are quoted *in haec verba*, Record p. 208.) The brief states:

“The court erred in sustaining an objection to a question asked by defendant of its witness McGregor concerning the market price of Alaska red salmon in the year 1910.” (Defendant’s Exception No. 8, p. 165; Brief, p. 36.)

6. That coupled with the last assignment of error is the ruling of the trial court in declining to allow the defendant to introduce evidence in accordance with a certain offer made by defendant at the trial. This offer is quoted in full in the assignments of error (pp. 208-209) and is fully and freely quoted in the brief (p. 37).

7. That the court erred in refusing to allow the witness P. A. Berglund to answer the following question asked by defendant: “Where were these piles?” (referring to piles of canned salmon), and also in refusing to allow the same witness to state how many piles of canned salmon there were in the lot of 2045 cases, to which rulings Defendant’s Exception No. 12 was taken. The brief (pp. 40-42) states the full substance of the testimony with which this ruling is concerned, and the assignment of error (p. 209) quotes the question *in haec verba*.

It is therefore submitted that the specifications and assignments are sufficiently taken in strict accordance with the rules, and that Rule 24 does not require the specification of errors to be first separately printed in the brief, and thereafter again printed as the particular errors are discussed.

## II.

**THE MOTION FOR A NONSUIT.**

It is urged that this exception cannot now be considered, for the reason that the motion was not renewed at the close of the evidence. Such, without doubt, is the general rule. There are, however, certain considerations which may avoid its application to the present case.

The reason of this rule, as we gather from the authorities, is that if the defendant below relies upon his motion for a nonsuit, he must not introduce any evidence, for the reason that he may by such evidence supply omissions in plaintiff's case. Thus, the appellate court, if the motion could be urged before it without renewal, might be placed in the position of compelling a reversal, notwithstanding the fact that the omissions complained of had been filled by other testimony; that for this reason the motion for a nonsuit compels the examination of the whole case.

The bill of exceptions in the present case brings before this court all of the evidence both of the plaintiff and of the defendant, and in our opening brief we have endeavored to show that defendant's evidence not only does not supply any omissions in plaintiff's case, but it strengthens the fact of such omissions; that there is no evidence whatever in this case that the contractor canned all the fish that were furnished him. Upon the contrary, it without conflict shows that he did not do so.

Since this rule is a technical one, it ought not to be applied when the reason therefor has ceased. This motion, while denominated one of nonsuit, was directed only to the first cause of action (pp. 92-93). If it had been granted, there would still have remained at least the third cause of action, and also the counter-claims. The burden is upon the defendant in error when he urges that this motion for a nonsuit cannot now be considered, to show that the *defendant* did thereafter introduce evidence in his *defense*. It does not affirmatively appear from the record that any evidence was thereafter introduced as a defense to the first cause of action. It may be, and indeed properly was, directed toward the proof of the counter-claims, and in any event the evidence was not wholly introduced as a defense. If it were not introduced strictly in such capacity, the rule does not apply, *for even if the motion had been granted, defendant must have continued to present this same evidence in support of its counter-claims.*

Furthermore, it should be noticed that when this motion was made and denied the record contained evidence concerning the efficiency of defendant's machinery. This evidence had been introduced over objection. It was not until the conclusion of the defendant's witness Berglund's testimony (Record, p. 125) that the ruling of the trial court was changed and the evidence put in by plaintiff upon the subject of the machinery eliminated. The fact then that the defendant proceeded with its case after the motion

was denied was not due to any error or omission on its part, but to a change in the ruling of the trial court; and it is submitted that the technical rule here invoked should not be applied to such a case. Here may also be considered the error assigned to the effect that the trial court erred in allowing the evidence concerning the character and efficiency of the machinery, notwithstanding the fact that this evidence was subsequently eliminated. No instruction was given by the trial court that the jury must disregard such testimony, other than that the same was eliminated. The plaintiff in error should not now lose any rights because it has presented evidence made necessary only by the first and admittedly erroneous ruling of the trial court.

The only object of reviewing the evidence upon this assignment of error was to show that there was no evidence to support the allegation of the complaint that the plaintiff had performed all the covenants and conditions of his contract. That on the contrary there was an affirmative showing to the effect that he did not so comply. Thus the court at the time it made the ruling on the motion for a nonsuit, had before it and as the basis of its ruling the complaint, the contract, and an admission by plaintiff of non-performance. It was not a mere failure of proof, but if anything a positive admission of non-performance. If it is not such admission, and if there is any conflict in the evidence as to the performance by plaintiff, then the motion, of course,

was properly denied in any case; but, if as we claim, there was such admission of non-performance, then this ruling on the motion can now be reviewed, because it was solely upon a proposition of law, and no issue or question of fact was involved.

It was held in *Lydia Cotton Mills v. Prairie Cotton Co.*, 156 Fed. 225, that under such circumstances the rule of practice referred to did not apply and that it was immaterial that the motion for a non-suit was not renewed or a motion made to direct a verdict.

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### III.

**PLAINTIFF'S PRIMA FACIE CASE IS NOT MADE OUT BY A  
SHOWING THAT THE DEFENDANT BELOW ACCEPTED AND  
RECEIVED THE BENEFITS FROM 44,000 CASES PACKED BY  
PLAINTIFF.**

We do not find in the brief for defendant in error any claim that the contractor canned all the salmon that was furnished him. He does, however, rely upon the proposition that inasmuch as he did pack 44,000 cases which were received by defendant, that such proof is sufficient to make out a prima facie case of compliance with all the conditions of his contract, and that the only remedy which the defendant below then had was by way of cross-action for affirmative relief for any failure on the part of the plaintiff to perform the stipulations of his contract.

We submit that if the plaintiff sues upon his contract and alleges its full performance, it is

obligatory upon him to affirmatively prove such performance, and he cannot, by showing a part performance only, throw the burden upon the defendant to prove its damages resulting from failure to fully perform; that such rule is elementary and that the contrary is not asserted by the cases cited in the brief for defendant in error (p. 19).

Thus, the first case, *Kauffman v. Raeder*, 108 Fed. 171, states the question (p. 174):

“May one party to a contract, who has accepted and retained the benefits of its *substantial* performance by the other party, retain and enjoy these benefits and still *rescind* the agreement and escape all the burdens and liabilities of the contract, because the first party has failed to perform, at the exact time stipulated therein, a subordinate covenant incidental to the main purpose of the agreement, which goes only to a part of the consideration and whose breach may be compensated by damages.” (Italics ours.)

In the present case the defendant below did not seek to *rescind the agreement*, and the covenant which the contractor failed to perform, if any, was not “incidental to the main purpose of the agreement”, but was its essential condition. If there be any condition precedent in this contract, it is that the contractor shall pack all the salmon furnished him, up to 2700 cases per day. From the standpoint of the company this was the most important obligation the contractor assumed.

*German Savings Inst. v. De La Vergne &c. Co.*, 70 Fed. 146.

This decision is by Judge Sanborn, who also wrote the decision in the Kauffman case. It is there asserted that the retention of the benefits of a substantial performance after default may defeat an action for the contract price. It must be noticed, however, that the court was here dealing with an admittedly "substantial" performance, and the default, if any, was a technical and subordinate one.

This term "substantial performance" has been thus defined:

"Substantial performance is performance, the divergence permitted being unimportant, immaterial, inadvertent and unintentional."

*Gompert v. Healy*, 133 N. Y. Supp. 689.

In *Pratt v. Dunlap*, 82 S. W. 195, the court said, at p. 196:

"Having told the jury that to recover the plaintiff must prove that he had performed the contract according to its terms, the court later told them that, if the plaintiff had shown that he had substantially performed it according to its terms, he would be entitled to recover. Attention is called to this latter instruction by an exception which has not been pursued. We see no conflict between the two instructions. Each calls for the performance of the contract to warrant a recovery."

The principle of law adopted by these cases cited by defendant in error is that it is inequitable to permit the recipient of benefits to totally defeat an

action for the contract price if he has retained the property or the benefits for such a length of time that the defaulting party has been deprived of a substantial part of their value or their use. In other words, it is applied to a contract such as purchase and sale, and as if the contractor in this case had agreed to *sell* this salmon to the company; but such was not the relationship of the parties, and under no circumstances could the company have tendered the salmon back to the contractor and compelled him to pay the purchase price therefor. The company by retaining this salmon did not damage the contractor, who was entitled to receive 55 cents per case as soon as he had prepared it, ready for the ship. It is quite immaterial, so far as his rights are concerned, if the company never shipped the salmon or if it had been lost before it reached the market. No estoppel therefore can here arise. The retention or sale by defendant of the salmon was quite aside from any legitimate inquiry concerning the rights of these parties and the admission of the sales account in evidence was improper, because it placed before the jury, as indeed was done at the argument, the general thought that the company had realized large sums of money from this pack and for that reason should not be heard to dispute the contractor's claim.

This is not an action in equity, either for rescission or otherwise, and it indeed would be anomalous if the plaintiff can in all cases prove the partial performance of his contract, and then rest.

The Civil Code of California, Section 1439, provides:

“Before any party to an obligation can require another party to perform any act under it, he must fulfill all conditions precedent thereto imposed upon himself; and must be able and offer to fulfill all conditions concurrent so imposed upon him on the like fulfillment by the other party, except as provided by the next section.”

In *Dermot v. Jones*, 2 Wall. 1, it was said by Mr. Justice Swayne:

“While a special contract remains executory the plaintiff must sue upon it. When it has been fully executed according to its terms, and nothing remains to be done but the payment of the price, he may sue on the contract, or in *indebitatus assumpsit*, and rely upon the common counts. In either case the contract will determine the rights of the parties.

“When he has been guilty of fraud, or has wilfully abandoned the work, leaving it unfinished, he cannot recover in any form of action. Where he has in good faith fulfilled, but not in the manner or within the time prescribed by the contract, and the other party has sanctioned or accepted the work, he may recover upon the common counts in *indebitatus assumpsit*.” (p. 9.)

The case mentioned in the last sentence of the quotation, viz.: where the contractor has in good faith fulfilled but not in the manner or within the time prescribed by the contract, and the other party has accepted the work, is the one involved in the present case, putting it as strongly as possible for

the plaintiff below, and it will be noticed that the rule is there laid down that he must recover in *indebitatus assumpsit*.

The plaintiff below did sue on the common count, a precaution which was entirely unnecessary if his present position is correct, because under that theory he can recover on his contract, although he had not fully performed it, and can always recover for the value of the work actually done, in a suit *on the contract*. This would obviate the necessity of ever suing in assumpsit where a special contract exists.

To permit the receipt and retention by the company of the 44,000 cases to be in itself sufficient *prima facie* evidence of a full performance by the contractor of his contract, is directly opposed to another principle of law adopted by the trial court in this case and also relied upon by defendant in error; this is, if a plaintiff alleges a full performance of his contract he is not permitted to prove an excuse for non-performance. If by having packed a certain number of cases the contractor can throw the burden on the company of proving damages for failure to fully perform, this rule of pleading would become quite useless. It would not be necessary that plaintiff allege any excuse, because proof of part performance is as efficacious as proof of full performance. It was stated in *Oila Portland Cement Co. v. Ullman*, 140 S. W. 620, at page 626:

"Under a plea of performance, evidence tending to show a waiver of performance is not admissible. And, although appellants were permitted to introduce evidence tending to show an excuse for not ordering more cement, the admission of such evidence cannot enlarge the scope of their pleadings. The answer alleges performance, and they are bound by that allegation. A party's pleading is the only door through which he can introduce his evidence. A party suing for breach of a contract must allege and prove performance of all conditions precedent, or he must allege and prove an excuse for their non-performance. He cannot rely on a waiver under a plea of performance. *Roy v. Boteler*, 40 Mo. App. 213, 226; *Brinkerhof v. Elliott*, 43 Mo. App. 185, 194; *Kansas City ex rel. v. Walsh*, 88 Mo. App. 271, 277, 278; *Lanitz v. King*, 93 Mo. 513; 6 S. W. 263; *Mohney v. Reed*, 40 Mo. App. 109."

We cite also *Caledonian Insurance Co. v. Levy*, decided by this court October 7, 1912.

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#### IV.

##### THE INSTRUCTION CONCERNING THE DELIVERY OF FISH.

The plaintiff in error has especially dwelt upon this instruction in its opening brief (pp. 27-33), for the reason that if this instruction correctly state the law applicable to this case it is manifest that the defendant below could not claim any damages for fish which were not caught or which were thrown away before they actually reached the dock, regardless of the circumstances under which those acts

were done, that is, if as we claim the evidence in this case shows, the superintendent, solely because the contractor was unable to handle the fish delivered to him as required by his contract, limited his fishermen so that some 36,000 fish which would have filled about 3000 cases were never caught, and some 31,000 fish, which would have filled about 2500 cases, were thrown away, after the expense of procuring them had been incurred, nevertheless these facts can under no circumstances constitute any elements of counterclaim or of alleged failure on the part of the plaintiff to comply with his contract, because the fish were not actually placed on the dock.

If this instruction be correct, manifestly defendant's counterclaim based thereon cannot be maintained, and counterclaim B (pp. 59-60), which states: that by reason "of the failure of the contractor to pack 2700 cases daily the defendant lost 36,600 salmon that otherwise would have been caught by the fishermen and supplied to the plaintiff for the purpose of canning," does not state a cause of counterclaim, because it appears upon its face that these fish were not delivered.

To the argument of plaintiff in error that the word "furnish" as used in the contract should be given a wider meaning than the word "deliver", and that by reason of the instruction of the court the element of ability to furnish when necessary is eliminated, counsel for defendant in error replies as follows:

He first claims that the counterclaim concerning the 31,698 salmon alleges that the company had delivered these salmon at the cannery, and therefore if defendant desired to prove the circumstances excusing the delivery of the salmon under its contract it must have pleaded the excuse. To this we answer that this objection cannot now avail defendant in error, for the reason that no objection was made to this testimony when introduced, upon the ground that the proof did not conform to the pleading. On the contrary, the evidence was admitted without objection. Under these circumstances the objection of *variance* is waived, even if there were such variance. Had the objection been made and sustained the defendant below would undoubtedly have been given an opportunity to amend its counterclaim by making more clear the expression "That said defendant had caught and delivered at said cannery", although strictly speaking we think that this expression would include salmon which had been brought to the cannery in the scows and moored alongside the dock; the expression "at said cannery" would seem to be susceptible of such construction. We think it however sufficient on this point to rest upon the statement that variance between allegation and proof is one which must be taken advantage of when the evidence is introduced, and if not it is conclusively waived.

22 *Ency. Pleading & Practice*, p. 629, Title Variance.

It is said that under no possible construction of the contract could dumping the 31,698 fish into the waters of Bristol Bay constitute a delivery to the plaintiff. We do not claim that it was a "delivery" to the plaintiff, but we do claim that they were "furnished" the plaintiff.

It is next said by counsel that the defendant below "did plead the necessary facts under counterclaim " B (for the 36,600 fish not caught), but on the " trial it abandoned that counterclaim". We do not know upon what portion of the record this assertion is made. The witness Berglund said (p. 98):

"Q. Why did you curtail the catch?

A. Because we could not get away with them. I was fooled by the expectation of getting the cans through. For that reason we had to throw them away. I always used to be figuring on so many fish per case and that so many boats will catch so many fish, and I curtailed the catch according to the cans of our crew in the cannery.

Q. How did you curtail it?

A. By limiting the boats and taking off some boats. I mean the fishing boats. I said to the fishermen that we had more fish than we could handle. The contract with the fishermen stated 1200 fish per day. They were supposed to deliver, or we were compelled to receive, rather, and we were supposed to pay them for that amount whether we received them or not, and we did, on the basis of 1200 fish per day."

\* \* \* \* \*

"I have testified on direct examination that I had sufficient fish to enable the plaintiff to pack

2,700 cases of fish per day provided I had all the fishing boats fishing. I was not allowed to throw the fish away. There is a fine for throwing fish away, to destroy food fish, there is a penalty. I did not have all the boats out fishing, of course. I did not know that they were not unable to get away with the fish. I supposed they were able to. I think I directed the fishermen to go out and get more fish whenever we were cleaning up in the cannery. I was afraid of getting too much and we would have to throw them away.

Q. Did you have any ground for your fear when there were only 600 cases delivered there in one day?

A. We had more fish on the dock; we had plenty of it. The dock don't hold so much; it holds several days. The lighters we had fish in. We elevate them up into the fish-house; that is done easily. We can keep a reserve in the scows from one day to the other." (p. 112.)

Q. And it appears from your own book here, that on the 8th, 9th, 10th, 11th, 12th, and 13th you restricted the catch of fish for this cannery. Now, what do you say, what is your explanation for that conduct?

A. Because we had too much; we could not handle any more." (pp. 113-114.)

"I found that we could not handle the fish after we had tried it several days, and the Chinese boss asked me to the three machines every day, and we got piled up with the cans on the floor; in fact, we lost a whole lot by it, by trying to run too many machines. They could not get away with them, and as soon as they got blocked it stopped them; it was slower work. We could have done better with two machines than by running three." (p. 115.)

Q. Now, referring to the number of fish, commencing with the 1st day of July, and end-

ing with the 13th, was there any day upon which you did not have a surplus of fish at the end of the day?

A. No, sir, we always had plenty of fish in the evening, and could put up more if we could." (pp. 124-125.)

"Some of the fishermen were working near the cannery and others were working far off. It would not take 48 hours for the fishermen who were nearest to the cannery to get their fish in, but we did not have room enough on the dock to bring them in. It would not take over half an hour from the nearest point to the cannery to get the fish into the cannery. The reason we allowed the 48 hours was because we had no place to put them when they did get there."

"In reply to questions upon redirect examination the witness testified:

These fish were delivered with the tide. It was necessary that the tide be just right in order that the scows could get up to our wharf, but the fishermen could deliver from the lighters on the scows out in deep water at any time, and then it took the tide to bring the scows up. The delivery of fish to the fish-dock is dependent on high water. We had two tides a day." (pp. 174-175.)

The witness Jonsson testified upon cross-examination (p. 138):

"Q. Was that 36,600 salmon actually delivered into the fish-bins of the defendant cannery?

A. No.

Q. It never was?

A. It never was.

Q. It never was put in the fish-bins?

A. No. The boats were not fishing.

Q. The boats were not fishing? The 36,600 fish were never caught were they?

A. They were never caught." (p. 139.)

"The defendant paid the fishermen \$2,-206.98, concerning an item of 36,600 salmon, on account of limits, at 63 cents." (p. 158.)

From this evidence it appears that not only did defendant below not abandon its claim on account of the fish not caught, but that such evidence was fully developed, upon the direct, as well as upon cross-examination of these witnesses.

It is next said in the brief:

"The instruction had relation to the 31,698 salmon fish dumped from the lighters, and 36,600 fish not caught, which the defendant claimed it had delivered to the plaintiff for canning." (p. 37.)

This statement would seem to make obvious the error in the instructions. It was tantamount to instructing the jury that under no circumstances could the defendant below recover any damages for the failure of the contractor to handle fish that were not delivered. It entirely eliminates the construction which the trial court was requested to place upon the transaction, to the effect that if the evidence showed that the defendant would have delivered more fish, excepting only for the limit placed upon its fishermen, which limit in turn was caused solely by plaintiff's inability to comply with his contract, and if the evidence further showed that the defendant at all times had on hand at its

cannery ready for delivery to the contractor more fish than the contractor actually canned, then the defendant had fully complied with its obligation to furnish the additional fish.

The exception to this instruction was taken upon this specific point, and the language of the court, which was embodied in the instruction, was that the word "furnish" means "delivery".

In addition to the cases cited to the effect that the words "furnish" and "deliver" are not synonymous we cite

*Francis v. State*, 21 Texas 280,

where it was said (p. 285):

"Furnish and convey are words of widely different meaning. To 'furnish' a thing and to 'convey' it signify very different acts. To 'furnish' is to provide or supply anything wanted by another, and to 'convey' is to bear, carry or transport the thing to another person or place. A person at a distance may furnish the article desired, upon request by letter or otherwise, and another may convey it to the person for whom it is intended. One may 'furnish', provide or supply a person confined in jail with food, which another may 'convey' into any other jail to the person therein confined. Therefore to furnish a person who is confined in jail with anything may and ordinarily does mean quite a different act from what we understand by the words 'shall convey to any jail,' anything."

It is submitted that this instruction, going as it does very largely to the merits of defendant's counterclaim and defense, placed before the jury an

erroneous view of the law and of the obligations of the defendant under its contract and that the defendant in error has not in his brief presented any legitimate support for it.

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## V.

### THE INSTRUCTION CONCERNING THE SPOILED CANS.

It is claimed by defendant in error (Brief, p. 39) that the exception taken to the instruction under consideration does not permit the point urged by plaintiff in error in its brief (p. 34). That point was that the contract provided that the contractor was to be responsible for all defective cans over four in one hundred, and that the instruction given conflicts with this contract right. It is urged that because the trial court, after the exception had been taken, stated: "That is for the jury to determine, "whether they were a part of such loss or not", the motion if relied upon should have been renewed. We submit that no such obligation was imposed upon the defendant below. It will be noted that the court requested counsel not to argue his exceptions, and the exception taken seems specific in stating "The objection to that portion of the instruction "which says that the loss in spoiled cans could "be accounted for by the usual loss that occurs in "operations of that kind". These instructions were given by the court without an opportunity on the part of counsel to examine them beforehand, and necessarily in a charge of this length the ex-

ceptions must be taken at once and in general language.

But if this position of the defendant in error is correct and the exception taken does not support the argument that we may now consider whether or not the instruction conflicts with the contract, still the error in the instruction even more obviously appears from the precise language of the exception taken.

There is no evidence in this case of any spoiled cans other than the cans, some good and some leaky, that were left at the cannery and which the contractor's men were engaged in mending at the close of the season. We will repeat the court's instructions, for visual reasons:

“As I have suggested, the plaintiff is required, in order to recover upon its contract, to show that he has performed the stipulations of that contract on his part. Now, he has performed that contract if he has done the work called for with the skill, diligence and efficiency usually obtaining in such work. There has been evidence put before you here as to that class of work and what the usual result is in putting up a large pack of fish, as to the number of cans or cases in a given number that will usually be spoiled or destroyed through one cause or another. You have a right to take that evidence into consideration and determine whether the loss of fish which has been testified to here, *that is, I mean the loss in spoiled cans, was any more than the usual loss that occurs in operations of that kind.* If there were not, then the plaintiff has performed the contract as it is contemplated by the law he should have

performed it—with due diligence; although not such as to absolutely preclude any loss of fish through faulty work, nevertheless in such a way that has avoided a loss which is unusual or beyond that which is ordinarily experienced in such work.” (Rec. pp. 201-202.)

The evidence to which the court referred was that of the witness Story (pp. 171-174), who testified in response to the following question asked by counsel for plaintiff:

“Q. In making a pack of 44,000 cases, how much debris will necessarily accumulate, under a pressure of say where the bulk of the pack must be made in 15 or 20 days? \* \* \* Yes, the percentage of waste, inevitable waste?

A. That would depend somewhat. Of course, there might be quite a difference in one cannery from another cannery, but from 300 to 500 cases would not be amiss—bruised and mashed, and jammed, and in different ways.

I say that from 300 to 500 cases would inevitably and necessarily accumulate during the season in some canneries, perhaps more in others.”

The 2045 cases of salmon, or whatever the number was, that were left at the cannery at the close of the season, were not cans which in the language of this witness were “debris cans,”—that is, bruised and mashed and jammed. On the contrary, they were *leaky* cans, upon which the process of manufacture was still going on. All the witnesses concur in this regard. A leaky can cannot be a useless or rejected can, because the contract provides that the contractor shall mend all leaks daily, and the record

shows that in every cannery there are a considerable number of cans that develop leaks from day to day. In no sense then does this particular lot of leaky cans come within the category of general *waste* of the cannery.

Now, by the instruction given the jury were told that they had a right to consider this evidence as concerns "the loss of fish which has been testified "to here, that is, I mean, the loss in spoiled cans". Since there had been no loss in spoiled cans referred to excepting these leaky cans, the jury were necessarily by this instruction informed that they might disregard the counterclaim based upon the failure to mend these leaky cans, if they were a part of the inevitable *loss* of the cannery. But it is claimed that this instruction, if it contains error, is cured by another instruction which is quoted in the brief for defendant in error, p. 42. It is submitted that this quoted instruction does not cure the alleged error of which we now speak. It will be observed that the instruction above quoted and to which we now direct the court's attention was a general instruction (pp. 191-192) given after the specific instructions had been given. There is no statement which limited the consideration of the jury of spoiled cans to cans other than those in the 2045 cases. These two instructions read together may be thus summarized:

By the instruction on page 184 the jury were told in effect that concerning the 2045 cases of spoiled salmon left at the cannery they might give the de-

fendant damages therefor if the cases of salmon were spoiled and rendered valueless solely by reason of the neglect of plaintiff's men; but by the instruction on page 192 they were told to take into consideration whether the loss in spoiled cans was any more than the usual loss that occurs in operations of this kind.

It is submitted therefore that the one instruction does not cure the other, and that we have here a clear and erroneous general instruction to the effect that the loss in spoiled cans, claimed to be 2045 cases, was not a proper cause of counterclaim if this loss was no more than usually occurs in operations of that kind.

This instruction also contains what we claim to be an erroneous statement concerning the relationship created by the contract in that it states that the contractor may recover upon his contract if he has done the work called for "with the skill, diligence and efficiency usually obtaining in such work."

We endeavored to develop at the argument the idea that by this contract the defendant in error was constituted an independent contractor, because he represented the employer as to the results of his work and not as to the means whereby it is to be accomplished.

*16 Am. & Eng. Enc. of Law*, (2nd Ed.) p. 187.

The men were employed by the contractor and paid by him, and he through his foreman had con-

trol over the Chinese laborers. The superintendent Berglund testified that he did not know for what work the respective men were employed (p. 116), and that he would suggest only to the Chinese foreman what to do for the day; that the details of the work in the cannery were under the control of the Chinese boss (pp. 115, 117, 118, 123). The contractor was paid 55 cents per case for all fish packed in accordance with the contract, and not on a basis of work done.

We submit therefore that the contractor would not have performed his contract if, in the language of the instruction "He had done the work called for "with the skill, diligence and efficiency usually obtaining in such work". He might have been ever so skilful, diligent and efficient, and yet he would not have been entitled to compensation until he had packed the fish. The performance of his contract is measured not by his skill, efficiency, etc., but by his output of canned salmon.

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## VI.

At pages 51 and 52 of the brief of the defendant in error, the contention is made that defendant cannot complain of error of the court in sustaining the plaintiff's objection to a question asked by defendant to its witness McGregor concerning the market price of Alaska red salmon in the year 1910, for the reason the jury found that the plaintiff had fully performed its contract. And has cited as sup-

porting this remarkable doctrine *Springfield v. Cunningham*, 204 U. S. 647; *Lovenguth v. City of Bloomington*, 71 Ill. 241; *Brown v. St. L. I. M. etc. Co.*, 52 Ark. 120, and others.

We respectfully submit that no such doctrine is announced in any of the cases cited by defendant in error, and that no such doctrine can be found in the books. We concede it to be a general rule where a court erroneously instructs a jury as to the measure of damages, that no claim can be made for such error, if the jury having had the benefit of all the evidence offered within the issues shall have found against the claim for damages. There is a vast distinction between a proposition of this character, and the refusal of the court to permit a party to submit legitimate proof of his damage. If the rule invoked by plaintiff applied to the refusal of the court to receive evidence, then, pursued to its legitimate conclusion the result would be if the trial court had refused to allow the defendant to offer any testimony and the jury then should have found that the plaintiff had performed his contract, the defendant could not complain of error of the court in refusing to permit it to make out its case. This is not the law. Had the lower court permitted the defendant in this case to have offered all legitimate proof of the value of its loss and proper evidence pertaining to the measure of its damages, and then in its instructions to the jury, should have erred as to the correct rule for the measure of damages, and the jury should then, having all the testimony of

both parties before it, have found against the defendant's contention, the rule invoked by plaintiff would apply.

This rule invoked by the defendant in error is but, stating in another form the general rule, that the court will not consider an error unless it is prejudicial.

The rule, however, is universal that the exclusion of competent evidence is presumed to be prejudicial.

*Westall v. Osborne*, 115 Fed. 282; 53 C. C. A. 74.

In any event, this question as to the proper measure of damages becomes important in the event of a new trial.

It is lastly said by defendant in error (pp. 52-53) that the alleged error in not permitting the defendant below to allow the witness Berglund to answer certain questions concerning the piles of canned salmon left at the cannery is "trivial. This indeed is a small matter, but it is made so by reason of the extraordinarily loose character of the testimony offered by the plaintiff below. Concerning the number of cases of leaky cans left at the cannery, the defendant had produced witnesses who had counted these cans under specific instructions so to do. To rebut this the plaintiff below produced the witness Gray (p. 170), who testified that he just walked through the cannery and saw one pile in the warehouse and a small pile opposite; he did not know

whether he saw all the cans or not. This testimony being given, the witness Barling testified (p. 179) that a pile of cans of certain dimensions would contain a certain number of cases. The defendant below in surrebuttal then attempted to show that there were other piles which were not seen by the witness Gray, and in order to prove this it was necessary to show where these piles were. It is now urged that it was necessary that the defendant adduce all its evidence on this point while making out its case in chief; the obvious answer to this is that the location of these piles had not become of the slightest importance until the testimony of the witness Gray for the plaintiff.

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*Attorneys for Plaintiff in Error.*



No. 2173

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

ALASKA FISHERMEN'S PACKING  
COMPANY (a corporation),

*Plaintiff in Error,*

vs.

CHIN QUONG,

*Defendant in Error.*

PETITION FOR A REHEARING ON BEHALF OF  
PLAINTIFF IN ERROR.

G. C. FULTON,

CHICKERING & GREGORY,

*Attorneys for Plaintiff in Error and  
Petitioner.*

Filed this ..... day of March, 1913.

FRANK D. MONCKTON, *Clerk.*

By ..... *Deputy Clerk.*

**FILED**



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## PETITION FOR A REHEARING ON BEHALF OF PLAINTIFF IN ERROR.

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*To the Honorable William B. Gilbert, Presiding  
Judge, and the Associate Judges of the United  
States Circuit Court of Appeals for the Ninth  
Circuit:*

The plaintiff in error respectfully asks for a re-hearing in this cause.

The questions involved are of vital importance to those engaged in the salmon industry in Alaska, because the form of contract here used is practically the same as that used by all the canners with their

Chinese contractors. It does not seem possible to produce proof more convincing than has been produced, that a contractor has not complied with such contract. From the nature of the business it must follow that a company, should the contractor be unable to handle the stipulated number of cases per day, would restrict its catch and from time to time throw away fish that were caught but could not be delivered at the cannery owing to its congested condition. If canners cannot rely upon these facts as showing a default on the part of the contractor, the damages which they can claim in the event of a breach, no matter how flagrant, are inconsequential.

It must follow furthermore that this contract is construed as essentially one of employment, and not of owner and contractor. If therefore the employee, or contractor, whatever he may be called, performs his work as stated in the instructions, "with due diligence", then he is entitled to the stipulated compensation, although he may have fallen far below his obligation to pack the contracted number of cases per day, or to handle all the fish furnished him. The first construction to all intents and purposes eliminates the contract so far as it imposes obligations upon the party of the second part. If he has sent to Alaska the stipulated number of men and they worked throughout the season, with, we will assume, proper diligence, he is entitled to his money, regardless of the ability or failure of his men to handle the catch; that is, his obli-

gations are measured by the standard of reasonable or proper care and skill, and not by the rigid requirements of the contract.

In the present case it has been shown without contradiction that,

(1) The plaintiff below did not pack 2700 cases of fish on any single day excepting July 14th.

(2) That there were actually in the bins on many days between July 1 and July 14 sufficient fish to have enabled him to pack 2700 cases per day;

(3) That 31,698 salmon were thrown away solely because the bins were already full, by reason of the inability of plaintiff's men to handle them;

(4) That fishermen were paid for 36,600 salmon which were not caught, solely because they were not needed by reason of the inability of the contractor to pack the fish on hand.

(5) That a large number of cases were left at the cannery in a partially completed condition, never having been mended, lacquered or boxed, obligations imposed upon the contractor by his contract.

There is not the slightest evidence in this case that any of the foregoing facts are disputed. To allow the contractor therefore to recover under such circumstances must of necessity have the result of a holding that for all practical purposes this contract is not binding upon the contractor, and that it

is not at least practicable to ever produce proof to show that he has not complied with his contract.

On this petition we draw the court's attention to but two subdivisions of the opinion, both dealing with instructions given by the trial court.

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**1. THE INSTRUCTION CONCERNING DELIVERY OF FISH ON THE DOCK (p. 191).**

The court in its opinion states:

“We think the court below committed no error in construing the contract to mean that the plaintiff's stipulation to pack 2700 cases per diem depended upon the defendant's undertaking to furnish the fish and to furnish them at the place where the plaintiff was under obligation to receive them, which was on the wharf.”

This is in connection with the instruction of the court (p. 194): “The word furnish means delivered, that is in accordance with the terms of the contract.” That the plaintiff's obligation to pack 2700 cases per diem depended upon the defendant's undertaking to furnish sufficient fish as stated in the opinion, is of course obvious, and no point has been made by us in that regard. But that the company was required to furnish (i. e. deliver, as “furnish” was defined by the trial court) these fish on the dock under all circumstances, is the particular portion of the instruction to which our exception ran.

It being conceded, as stated in the opinion "that the word furnish as used in contracts often does not mean deliver", it becomes necessary in order to support this instruction of the trial court to show that other terms and provisions of this contract permitted the instruction to the effect that the words were synonymous; that is, the court gave the jury a definition which was not, generally speaking, correct, and to make it correct it must be shown by some other stipulations or conditions of the contract that in this particular case the definition of these two words was the same.

We respectfully request the court's attention to the fact that there is no other term or provision in this contract which cures this error in definition, and to submit that the instruction of the trial court, as well as the above quoted sentence from the opinion of this court, does not take into consideration the true meaning of the word "furnish", which is "*to supply as needed*".

As stated by this court, this is not a question of pleading. The opinion holds that "to charge the plaintiff with liability for the loss or destruction of fish, it was necessary to bring the facts to his attention". That is, it was necessary to show that the plaintiff or one of his employees knew that the fishermen had been restricted in their catches and that the fish were in the scows, ready for delivery.

We ask the court to again consider this portion of the opinion, and would urge in that connection

that it was not the knowledge of the plaintiff's employees, but the *fact* that was the essential thing to be considered by the jury. If it was a fact that the bins were full, owing to plaintiff's inability to pack 2700 cases per day (which fact is clearly testified to and nowhere denied), and if it was further the fact that these fish were thrown away solely by reason of this congestion on the wharf (and this fact also is shown and not denied), then the defendant company complied with its contract to "furnish" the "*necessary*" fish, at least to the extent of the fish so restricted and thrown away, and the knowledge or ignorance of the plaintiff or his men of such fact can be of no consequence.

It is possible that if when the evidence concerning the throwing away of these 31,698 fish was offered, the plaintiff below had objected upon the ground that the allegation of the counter-claim was that these fish were delivered, that this objection would have been sustained, at which time defendant below might have been given permission to amend his counter-claim so as to allege that these fish were ready for delivery, and that this delivery was prevented only by the fault of the plaintiff; but no such objection was made, and the evidence was admitted. It must therefore be considered by this court as if the counter-claim had alleged (p. 59) that by reason of the failure of plaintiff to pack 2700 cases per diem in accordance with the contract, that the defendant was compelled to and did destroy

31,698 salmon that it had caught and had ready for delivery at said cannery but which it was unable to place upon the wharf because, owing to plaintiff's fault, the fish already there had not been removed from the bins.

We repeat that the case now comes before this court in precisely the same form as if this allegation had been made in the counter-claim, and it would seem necessary that this court must now hold that such an allegation would *not have stated a cause of counter-claim*. That in order to have made it a sufficient cause of counter-claim it must have been alleged that the contractor or his men knew that this 31,698 salmon had been caught and were ready for delivery.

We urge that such a holding would be contrary to the fundamental principles underlying the obligations of a contract. A person is not permitted to take advantage of his own wrong, and if these fish were not delivered solely by reason of the failure of the contractor, then, so far as the company's obligations are concerned, they were delivered. The ability and readiness to deliver gave the company exactly the same rights as an actual delivery, under the circumstances. This allegation, if supported by testimony adopted by the jury, would have entitled the defendant to damages. It would not have been necessary to show any formal tender to the contractor, because it is obvious that such tender would have been an idle thing. If he was unable to handle

the fish that were already on the dock, and that fact were established, as we think it was established in this case, by uncontradicted evidence, then to claim that each time a scow filled with salmon came to the dock it was necessary to formally tender these to the contractor, would involve the elements of an absurdity.

To cite a case which seems analagous we may assume that an owner has employed a contractor to erect a building, and the owner has agreed to furnish the necessary lumber for the building and the contract further should provide that this lumber should be furnished at the premises. The owner does supply the contractor from day to day with more than sufficient lumber to meet his present needs, but falling behind in his contract obligations the contractor does not complete the building as soon as he agreed and a claim is made against him by the owner for that reason. Is it necessary in such a case that the owner show not only that he has furnished all the lumber which the contractor needed, but that he also from day to day brought to the knowledge of and made a formal tender to the contractor of all the other lumber that would have been needed had the contractor properly fulfilled his contract?

In such a case would an instruction be proper that stated that the jury to determine if the owner has fulfilled his obligation to "furnish the necessary lumber" can consider only the lumber delivered on the premises?

Performance of an obligation is, we take it, always excused if such performance is rendered impossible by the fault of the other party. The sections of the Civil Code of California are cited as containing what we understand to be the universally accepted principle adopted:

“Sec. 1439. Before any party to obligation can require another party to perform any act under it, he must fulfill all conditions precedent thereto imposed upon himself; and must be able and offer to fulfill all conditions concurrent so imposed upon him on the like fulfillment by the other party, except as provided by the next section.”

“Sec. 1511. The want of performance of an obligation, or of an offer of performance, in whole or in part, or any delay therein, is excused by the following causes, to the extent to which they operate:

1. When such performance or offer is prevented or delayed by the act of the creditor, or by the operation of law, even though there may have been a stipulation that this shall not be an excuse; \* \* \*

3. When the debtor is induced not to make it, by any act of the creditor intended or naturally tending to have that effect, done at or before the time at which such performance or offer may be made, and not rescinded before that time.”

“Sec. 1512. If the performance of an obligation be prevented by the creditor, the debtor is entitled to all the benefits which he would have obtained if it had been performed by both parties.”

To the same effect is

Williams v. Bank of the United States, 2  
Pet. 96;

Anvil Mining Co. v. Humble, 153 U. S. 540;  
Antonelle v. Kennedy & Shaw Lumber Co.,  
140 Cal. 309.

We contend that the instruction given did not include this element, but that by stating to the jury that the contractor could only be at fault when the fish were actually delivered upon the wharf, the instruction was not complete, and that it should have been stated in addition that this obligation of delivery was excused if prevented by the fault of the contractor.

This question was directly brought to the attention of the court when the exception was taken, by the reference to the difference between the contract word "furnish" and the word "deliver". Under the authorities already cited to this court, the word "furnish" does not necessarily mean "deliver", because it is a word of wider significance, and frequently an owner may be said to have "furnished" materials, although he has not actually "delivered" them.

We realize that we are now urging to the court's attention a proposition embraced within narrow limits, but it will be seen that the distinction, though narrow, is vital, and must be determinative not only of this but of all similar cases; for if it is an essential element in such a

contract on the part of the owner that he prove these formal tenders to the contractor, then of course no damage at all can be recovered in the great majority of instances. The readiness and ability to furnish must depend, we assert, upon facts entirely apart from any actual tender to the contractor. If indeed in this case it had been shown during the early days of the fishing season that plaintiff's men were utterly worthless and that they were unable to handle or properly can any salmon, would it have been necessary in order that the owner could make out a case for substantial damages against the contractor, that he continue to fish throughout the season and each day bring to the dock and place in the bins fresh supplies of fish, even although he might have been obliged to throw away the fish already placed in the bins? Surely no such obligation can be imposed upon the owner. But, we ask, what is the difference in principle between such a case and this one, in which the jury have been expressly told that they could consider that the obligation of the owner to "furnish" fish could only be complied with by an actual "delivery" on the wharf?

In a word, we would request the court to again consider the proposition asserted in the opinion, that it was necessary that defendant show that the plaintiff or his foreman or workmen were informed that the fish were in the scows or lighters, ready for delivery, or that they were given an opportunity to

count or inspect them. If these fish were in fact brought in a scow to the dock and were ready for delivery, what possible difference could it make that plaintiff's men knew or did not know this; and if, again, these fish were thrown away, as the record without contradiction shows, because the bins were already full, has not the owner shown everything necessary for him to show in order to claim recoupment therefor? The instruction given by the court was as follows:

“One of the questions in the case which has given rise to considerable evidence and controversy is the question as to whether a sufficient number of fish were supplied by the defendant to the plaintiff to pack the number stipulated in the contract, to wit, 2700 cases per day. Now, you will review that evidence carefully in your minds and determine whether it has been shown on the part of the defendants in its counter-claim that this contract had not been carried out, that it did furnish sufficient fish to enable the plaintiff to pack the number of cases required by the contract, and if it did, and through the failure of the plaintiff, and without fault on the part of the defendant, the plaintiff has failed to pack that number of fish, why then, of course, as I have heretofore instructed you, the plaintiff will have been shown to have breached this contract, to have failed to fulfill it and the result would follow which I have already indicated.

And in that connection, as has been argued to you by counsel, fish are only delivered under this contract by the defendant to the plaintiff if they are delivered in the manner and at the place designated in the contract, and, as I have suggested, with the terms of that contract you

are familiar and you will recall where it was required that these fish should be delivered."

The jury were later told by the court as a part of its instructions that "the word furnish means delivered, that is, in accordance with the terms of the contract."

Therefore this instruction as so defined by the trial court was as follows:

"One of the questions in the case which has given rise to considerable evidence and controversy is the question as to whether a sufficient number of fish were supplied by the defendant to the plaintiff to pack the number stipulated in the contract, to wit, 2700 cases per day. Now, you will review that evidence carefully in your minds and determine whether it has been shown on the part of the defendant in its counter-claim that this contract has not been carried out, that it did *deliver* sufficient fish to enable the plaintiff to pack the number of cases required by the contract, and if it did, and through the failure of the plaintiff, and without fault on the part of the defendant, the plaintiff has failed to pack that number of fish, why then, of course, as I have heretofore instructed you, the plaintiff will have been shown to have breached this contract, to have failed to fulfill it and the result would follow which I have already indicated.

And in that connection, as has been argued to you by counsel, *fish are only delivered under this contract by the defendant to the plaintiff if they are delivered in the manner and at the place designated in the contract*, and, as I have suggested, with the terms of that contract you are familiar and you will recall where it was required that these fish should be delivered."

The jury were therefore told in precise language, and independent of any tender or knowledge on the part of the contractor, that the owner must have actually *delivered on the wharf* the fish, before it can claim any damages on account of the contractor's failing to pack 2700 cases per day. This instruction as it seems to us is silent as to the essential element that if the owner was ready, able and willing to so deliver these fish, but was prevented from doing so solely by the fault of the contractor, then that he can claim damages for such fish, even although they were not technically delivered.

---

## 2. INSTRUCTIONS AS TO SPOILED CANS.

The court in its opinion has considered only the objection to this instruction which was first urged, viz.: that the instruction conflicts with the contract as to the measure of damages, the contract providing that such loss shall be fixed at four cans per hundred. It is said in the opinion that this instruction had no reference to the measure of damages, but did refer to the question as to whether or not the plaintiff had sufficiently performed his contract to entitle him to recover thereon.

We have urged another objection to this instruction, more fully set forth in our reply brief (pp. 25-30), and it is possible that this objection not being at length referred to in the opening brief, has naturally escaped the attention of the court.

This was the objection which was specifically made when the exception was taken to the instruction, this exception being (p. 194):

“We take an exception to that portion of the instructions which says that debris cans which have been referred to could be considered a portion of the 2,045 cases.

The COURT. What is that?

Mr. GREGORY. That the general loss of a cannery can be considered a part of the 2,045 cases.

The COURT. That is for the jury to determine, whether they were a part of such loss, or not. You need not argue your exceptions, just simply state them.”

This instruction was as follows:

“As I have suggested, the plaintiff is required, in order to recover upon his contract, to show that he has performed the stipulations of that contract on his part. Now, he has performed that contract if he has done the work called for with the skill, diligence and efficiency usually obtaining in such work. There has been evidence put before you here as to that class of work and what the usual result is in putting up a large pack of fish, as to the number of cans or cases in a given number that will usually be spoiled or destroyed through one cause or another. You have a right to take that evidence into consideration *and determine whether the loss of fish which has been testified to here, that is, I mean the loss in spoiled cans, was any more than the usual loss that occurs in operations of that kind.* If there were not, then the plaintiff has performed the contract as it is contemplated by the law he should have performed it—with due diligence; although not such as to abso-

lutely preclude any loss of fish through faulty work, nevertheless in such a way that has avoided a loss which is unusual or beyond that which is ordinarily experienced in such work.” (Italics ours.)

The only evidence in the case on the subject, and therefore the only evidence that the court could have referred to when it said in this instruction

“There has been evidence put before you here as to that class of work, and what was the usual result in putting up a large pack of fish, as to the number of cans or cases in a given number that will usually be spoiled or destroyed through one cause or another”,

was the evidence of the witness Story (pp. 171-174), who testified that in a pack of 44,000 cases there would be from 300 to 500 cases which would be bruised and mashed and jammed, and would necessarily accumulate during a season.

No damages are claimed by the defendant below on account of any such “debris” cans. There is not a word of testimony in the record concerning any such cans left at this cannery. The counter-claim pleaded, upon which evidence was introduced, was to the effect (p. 61) that the contract provided that all leaky cans should be mended by skilled labor daily, and that the plaintiff between June 11 and July 22 failed and neglected to mend or cause to be mended 2624 cases, by reason of which these cases were damaged and rendered unfit for use.

This allegation obviously has no reference whatever to the ordinary and inevitable loss of a cannery, but to cases of salmon which had *not* been bruised, mashed and jammed, or otherwise rendered unfit, but which were set aside as leaky cans, *to be mended*. The mere fact that they were so set aside and that plaintiff's men were engaged in mending them is significant in showing that they were not "debris" cans or those which were considered as being incapable of being mended.

There was much evidence introduced concerning the number of these cases left at the cannery because they were not mended, as specified in the contract. The witnesses for the plaintiff all admitted that there were a considerable number of these cases. Referring briefly to the testimony of every witness called for the plaintiff, we find on this subject that they testified as follows:

The foreman Kep Yung (p. 83):

"Q. When your ship sailed away, did you not leave a great many cans there in the cannery spoiled?

A. A few hundred.

Q. About how many?

A. 600 or 700.

Q. As a matter of fact, were there not 2,045 cases of salmon left there on the wharf?

A. No.

Q. What was the matter with those cans that were left there?

A. Because we were called to come back to San Francisco.

The COURT. Q. Before you finished them, do you mean?

A. Yes."

Yee Chat, in rebuttal (p. 168):

"Q. When the Chinese and white crew left the cannery at the end of the season 1910, did they leave any cans there in the cannery or in the warehouse?

A. Several hundred.

Q. How many hundred?

A. 400 or 500.

Q. Any more?

A. No. The whole pile was about that much.

WITNESS continuing: I was finishing the bath-room work when the superintendent announced that we were to return home, myself and the Chinese crew.

There were 400 or 500 cases, not 400 or 500 cans. \* \* \*

The COURT. Q. Were they spoiled?

A. No, they were not cooked.

Q. Why did they go away and leave them there?

A. They had picked these out; they were picking these out, the ones with the broken seams, when we were called to leave the cannery and go to the city.

Q. Did they not have time to finish them?

A. If they had stopped one or two days they could have been finished."

The witness Gray, called by plaintiff in rebuttal, testified (p. 170) that he saw certain piles of cans left there in the warehouse, and that they were in different piles because they were different kinds of fish.

The testimony for the defendant below also shows without contradiction that these leaky cans were left at the cannery; that they had not been mended daily, and that the Chinese crew refused to mend them, and that there were over 2,000 cases so left at the cannery which could have been mended.

Now, it is this testimony to which the court must have referred in the foregoing instruction, because it is the only testimony in the case "concerning any loss in the spoiled cans". So when the court told the jury that they had a right to consider this inevitable waste as a part of and an excuse for the contractor, the jury must inevitably have been led to believe that, although a large quantity of cans were left at the cannery, the manufacture of which was not completed by the contractor, still the contractor was not responsible therefor, *because they were a part of the inevitable loss attendant upon the operation of any cannery.*

By the judgment in this case the owner will be compelled to pay to the contractor the contract price of 55 cents per case for these cases so left at the cannery.

That there were a very considerable number of cases left at the cannery is, as shown before, admitted by all. There is not the slightest dispute on this question; nor is there the slightest claim in the record that these cans had been mended daily, in accordance with the contract, or that they were

left there for any other reason than that the Chinese crew had not piled, labeled and put them in cases and nailed them up, as the contract (p. 16) requires they should do. We are not here directing the court's attention to anything other than the instruction of the court, but concerning that instruction it seems that by it the jury were erroneously allowed to consider as a part of these cases so left at the cannery the usual waste, as testified to by the witness Story.

This was the precise ground of the exception taken when the instruction was given.

Respectfully submitted,

G. C. FULTON,

CHICKERING & GREGORY,

*Attorneys for Plaintiff in Error and  
Petitioner.*

#### CERTIFICATE OF COUNSEL.

I hereby certify that I am of counsel for plaintiff in error and petitioner in the above entitled cause and that in my judgment the foregoing petition for a rehearing is well founded in point of law as well as in fact and that said petition is not interposed for delay.

WARREN GREGORY,

*Attorney for Plaintiff in Error  
and Petitioner.*

IN THE  
**United States Circuit Court of Appeals**  
NINTH CIRCUIT

THE UNITED STATES OF AMERICA,  
Plaintiff and Appellant,  
vs.

BOOTH-KELLY LUMBER COMPANY, a Corporation,  
STEPHEN A. LARAUT, ALICE LARAUT,  
ETHEL M. LARAUT and LUCY LARAUT,  
Defendants and Appellees,  
And

BOOTH-KELLY LUMBER COMPANY, a Corporation,  
Defendant and Appellant,  
vs

THE UNITED STATES OF AMERICA,  
Plaintiff and Appellee.

Appeal and Cross-Appeal from the United States  
District Court, District of Oregon.

TRANSCRIPT OF RECORD.

CEIVED

1912

FILED

SEP 25 1912



No.

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IN THE

# United States Circuit Court of Appeals

NINTH CIRCUIT

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THE UNITED STATES OF AMERICA,

Plaintiff and Appellant,

vs.

BOOTH-KELLY LUMBER COMPANY, a Corporation,  
STEPHEN A. LARAUT, ALICE LARAUT,  
ETHEL M. LARAUT and LUCY LARAUT,

Defendants and Appellees,

And

BOOTH-KELLY LUMBER COMPANY, a Corporation,  
Defendant and Appellant,

vs

THE UNITED STATES OF AMERICA,

Plaintiff and Appellee.

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Appeal and Cross-Appeal from the United States  
District Court, District of Oregon.

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TRANSCRIPT OF RECORD.

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THE UNITED STATES OF AMERICA,  
Plaintiff and Appellant,  
vs.  
BOOTH-KELLY LUMBER COMPANY, a Corporation,  
STEPHEN A. LARAUT, ALICE LARAUT,  
ETHEL M. LARAUT and LUCY LARAUT,  
Defendants and Appellees,  
And  
BOOTH-KELLY LUMBER COMPANY, a Corporation,  
Defendant and Appellant,  
vs  
THE UNITED STATES OF AMERICA,  
Plaintiff and Appellee.

**For the Plaintiff:**

John McCourt, U. S. Attorney, Portland, Oregon

**For the Defendants:**

A. H. Tanner, Portland, Oregon  
Woodcock & Smith. Eugene, Oregon

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[Stipulation as to Record.]

*In the District Court of the United States for the  
District of Oregon.*

UNITED STATES of AMERICA,

Appellant,

vs.

BOOTH-KELLY LUMBER COMPANY, a corporation,  
STEPHEN A. LA RAUT, ALICE LA-  
RAUT, ETHEL M. LA RAUT and LUCY  
LA RAUT,

Appellees.

BOOTH-KELLY LUMBER COMPANY,

Appellant.

vs.

UNITED STATES of AMERICA,

Appellee.

It is hereby stipulated by and between the plaintiff by the United States Attorney for the District of Oregon, and the defendant, Booth-Kelly Lumber Company, by its solicitors and counsel that the appeals of the respective parties herein may be heard on one transcript of the record to be made and printed herein, and that such transcript of the record on such appeal shall be made up of the following papers, to-wit:

All of the pleadings filed in said cause; the transcript of the testimony and evidence taken at the hearing, the same having been taken in writing by a

Master and filed therein; the opinion of the court; the decree; the petition of the United States for appeal; its assignment of errors; the order allowing its appeal; the original citation on said appeal and proof of service thereof; the petition for appeal of the defendant, Booth-Kelly Lumber Company; the assignment of errors of the said defendant; the order allowing its appeal; the original citation on said defendant's appeal and proof of service thereon, and the undertaking on appeal of said defendant.

It is hereby agreed that the above mentioned papers constitute all of the record, proofs, entries and papers on file in said cause necessary for the hearing of said appeals.

It is further stipulated and agreed by and between the said parties that the original exhibits introduced in evidence in said cause may be omitted from the transcript herein, the same having been copied at length into the transcript of the evidence.

Dated at Portland, Oregon, this 26th day of June, 1912.

JOHN McCOURT,  
United States Attorney for the District of Oregon.

ALBERT H. TANNER,  
Of Solicitors and Counsel for Booth-Kelly Lumber  
Company.

[Endorsed]: Filed June 26, 1912.

A. M. CANNON,  
Clerk.

[Order Enlarging Time to File Record.]

*In the District Court of the United States for the  
District of Oregon.*

No. 3633, May 1, 1912.

THE UNITED STATES OF AMERICA,

Plaintiff,

vs.

BOOTH-KELLY LUMBER COMPANY, a corpora-  
tion, EDWARD JORDAN, STEPHAN LA  
RAUT, ALICE LA RAUT, F. M. LA RAUT  
and LUCY LA RAUT,

Defendants.

Now, at this day, for good cause shown, it is OR-  
DERED that the plaintiff's and the defendants' time  
for printing the record and filing and docketing this  
cause, on the appeal of the plaintiff and the cross ap-  
peal of the defendants, in the United States Circuit  
Court of Appeals, Ninth Circuit, be, and the same is  
hereby, enlarged and extended 90 days from this  
date.

CHARLES E. WOLVERTON,

Judge.

*In the District Court of the United States for the  
District of Oregon.*

Be it Remembered, that on the 24 day of May, 1910,  
there was duly filed in the Circuit Court of the  
United States for the district of Oregon, a Bill of  
Complaint in words and figures as follows, to-  
wit:

## [Complaint.]

*In the Circuit Court of the United States for the Ninth  
Judicial Circuit and District of Oregon.*

THE UNITED STATES of AMERICA,

Plaintiff,

vs.

BOOTH-KELLY COMPANY, a corporation, ED-  
WARD JORDAN, STEPHEN A. LA RAUT,  
ALICE LA RAUT, ETHEL M. LA RAUT,  
and LUCY LA RAUT,

Defendants.

To the Judges of the Circuit Court of the United  
States of America, for the Ninth Judicial Circuit, and  
District of Oregon:

The United States of America, by the Attorney  
General, brings this bill of complaint against the  
Booth-Kelly Company, a corporation organized and  
existing under the laws of the State of Oregon, with  
its principal office and place of business at Eugene,  
Oregon, Edward Jordan of Coburg, Oregon, Stephen  
A. La Raut of Saginaw, Oregon, Alice La Raut of  
Saginaw, Oregon, Ethel M. La Raut of Saginaw,  
Oregon, and Lucy La Raut of Wilbur, Oregon, all  
citizens and inhabitants of the State of Oregon; and  
thereupon complains and shows unto your Honors:—

I.

The Booth-Kelly Company was on and prior to the  
14th day of February, 1902, ever since has been and  
still is, a corporation organized and existing under  
and by virtue of the laws of the State of Oregon.

## II.

On or about the 14th day of February, 1902, the defendant, Edward Jordan, filed with the Register and Receiver of plaintiff's Land Office at Roseburg, Oregon, his Timber and Stone Lands—Sworn Statement, under the provisions of the Act of Congress of June 3, 1878, entitled, "An Act for the Sale of Timber Lands in the States of California, Oregon, Nevada, and in Washington Territory", as extended to all the Public Land States by the Act of Congress of August 4, 1892, for the purchase of Lots seven (7), eight (8), nine (9), and ten (10), of Section Two (2), in Township Twenty-two (22), South, of Range Two (2), West of the Willamette Meridian. On the 7th day of May, 1902, the said Edward Jordan filed with and submitted to said Register and Receiver his proof, corroborated by the testimony of two witnesses, to establish his claim to said land, under the provisions of the Acts of Congress heretofore referred to, and under the rules and regulations of the plaintiff's General Land Office and Department of the Interior. On the date last mentioned, the said Edward Jordan paid to the said Receiver the sum of Four Hundred Dollars (\$400.00), being the full amount required by law for the purchase of said land. On the said 7th day of May, 1902, said Receiver issued to the said Edward Jordan his receipt acknowledging the payment of said money, and the Register of said Land Office issued his certificate to the effect that the said Edward Jordan was entitled to receive plaintiff's patent for said land so entered and purchased.

On or about the 7th day of February, 1902, the defendant Stephen A. La Raut filed with the Register and Receiver of said Land Office his Timber and Stone Lands—Sworn Statement, under the provisions of the Acts of Congress hereinbefore referred to, for the purchase of the Northeast quarter ( $NE\frac{1}{4}$ ) of Section Twenty-six (26), in Township Twenty one (21), South, of Range Three (3), West of the Willamette Meridian. On the 7th day of May, 1902, the said Stephen A. La Raut filed with and submitted to said Register and Receiver his proof, corroborated by the testimony of two witnesses, to establish his claim to said land, under the provisions of said Acts of Congress and said rules and regulations. On the date last mentioned, the said Stephen A. La Raut paid to said Receiver the sum of Four Hundred Dollars (\$400.00), being the full amount required by law for the purchase of said land. On the said 7th day of May, 1902, said Receiver issued to the said Stephen A. La Raut his receipt acknowledging the payment of said money, and the Register of said Land Office issued his certificate to the effect that the said Stephen A. La Raut was entitled to receive plaintiff's patent for said land so entered and purchased.

On or about the 7th day of February, 1902, the defendant Alice La Raut filed with the Register and Receiver of said Land Office her Timber and Stone Lands—Sworn Statement, under the provisions of the Acts of Congress hereinbefore referred to, for the purchase of the Southeast quarter ( $SE\frac{1}{4}$ ), of Section Twenty-six, (26), in Township Twenty-one,

(21), South, of Range Three (3), West of the Willamette Meridian. On the 7th day of May, 1902, the said Alice La Raut filed with and submitted to the said Register and Receiver her proof, corroborated by the testimony of two witnesses to establish her claim to said land, under the provisions of the said Acts of Congress and rules and regulations. On the date last mentioned the said Alice La Raut paid to said Receiver the sum of Four Hundred Dollars (\$400.00), being the full amount required by law for the purchase of said land. On the said 7th day of May, 1902, said Receiver issued to said Alice La Raut his receipt acknowledging the payment of said money, and the Register of said Land Office issued his certificate to the effect that said Alice La Raut was entitled to receive plaintiff's patent for said land so entered and purchased.

On or about the 17th day of February, 1902, the defendant Ethel M. LaRaut filed with the Register and Receiver of said Land Office her Timber and Stone Lands—Sworn Statement, under the provisions of the Acts of Congress hereinbefore referred to, for the purchase of Lots nine (9), ten (10), fifteen (15), and sixteen, (16), of Section Twenty-eight (28), in Township Twenty-one, (21), South, of Range Two, (2), West of the Willamette Meridian. On the 8th day of May, 1902, the said Ethel M. La Raut filed with and submitted to the said Register and Receiver her proof, corroborated by the testimony of two witnesses, to establish her claim to said land, under the provisions of the said Acts of Congress and rules and regula-

tions. On the date last mentioned, the said Ethel M. La Raut paid to said Receiver the sum of Four Hundred and Seven and 5.100 Dollars, (\$407.05), being the full amount required by law for the purchase of said land. On the said 8th day of May, 1902, said Receiver issued to said Ethel M. La Raut his receipt acknowledging the payment of said money, and the Register of said Land Office issued his certificate to the effect that the said Ethel M. La Raut was entitled to receive plaintiff's patent for said land so entered and purchased.

On or about the 17th day of February, 1902, the defendant Lucy La Raut filed with the Register and Receiver of said Land Office her Timber and Stone Lands—Sworn Statement, under the provisions of the Acts of Congress hereinbefore referred to, for the purchase of Lots one (1), two (2), seven, (7), and eight, (8), of Section Twenty-eight, (28), in Township Twenty-one, (21), South, of Range Two, (2), West of the Willamette Meridian. On the 8th day of May, 1902, the said Lucy La Raut filed with and submitted to the said Register and Receiver her proof, corroborated by the testimony of two witnesses, to establish her claim to said land, under the provisions of said Acts of Congress and rules and regulations. On the same day said Lucy La Raut paid to said Receiver the sum of Four Hundred and Seven and 5.100 Dollars, (\$407.05), being the full amount required by law for the purchase of said land. On the said 8th day of May, 1902, said Receiver issued to said Lucy La Raut his receipt acknowledging the payment of said money,

and the Register of said Land Office issued his certificate to the effect that the said Lucy La Raut was entitled to receive plaintiff's patent for said land so entered and purchased.

The said described lands are and were situate in the State of Oregon, and comprise in all eight hundred and five and sixty-four one-hundredths (805.64) acres, more or less, and on and prior to the 4th day of February, 1902, were lands of the plaintiff, belonging to its public domain and subject to entry and sale under the provisions of the Act of Congress of June 3, 1878, entitled, "An Act for the sale of Timber Lands in the States of California, Oregon, Nevada, and in Washington Territory," as extended to all the Public Land States by the Act of Congress of August 4, 1892, at plaintiff's Land Office at Roseburg, Oregon, and were and are timber lands of great value, to-wit, of the value of Ten Thousand Dollars, (\$10,000.00) and upwards.

Each of said entries and purchases was accomplished by filing with the Register and Receiver of said Land Office a "Timber and Stone Lands—Sworn Statement" to purchase the said land so therein embraced and divers affidavits and other documents and proofs in support thereof, and paying to the said Receiver the purchase price of the land so applied for, together with certain fees of said officials, all in the name of the person so making and filing such Timber and Stone Lands—Sworn Statement, and in manner and form as prescribed by the regulations of the plaintiff touching the procedure, proofs, and payments

prescribed for the making of such entries and purchases, and immediately upon the making of each of said entries and purchases there was issued to the said person so making the same, the said Receiver's final receipt evidencing the payment of the purchase money therefor, and the said Register's final certificate evidencing the making of such entry and purchase.

### III.

On or about the 3rd day of August, 1904, the plaintiff, by its five several patents of that date, issued in pursuance of said several final entries and purchases, conveyed to the said Edward Jordan, Stephen A. La Raut, Alice La Raut, Ethel M. La Raut, and Lucy La Raut, respectively, the legal title to said respective parcel of land which each of them had so entered and purchased, as aforesaid, each of which said patents, the plaintiff is informed and believes, and so alleges, is now in the possession of the respective defendants to whom they were so issued.

### IV.

The plaintiff avers that each and every one of the said entries was made wholly at the solicitation and by the procurement of the defendant, Booth-Kelly Company, acting by and through certain of its officers, agents and hirelings, thereunto by the said defendant corporation authorized and directed; who in the interest of and by authority from the said defendant corporation prior to the several times when the said Timber and Stone Lands—Sworn Statements

were so made and filed, and for the purpose of defrauding the plaintiff of the title, possession and use of the said lands, and of procuring such title use and possession to become vested in the said defendant corporation, and therein of procuring for the said Booth-Kelly Company, indirectly and covertly, the lands herein involved, under the Acts of Congress heretofore referred to, fraudulently and corruptly conspired together to procure and hire each of the said entrymen for some small sum of the defendant corporation's money to be paid to him for his services therein, to make his said entry, as aforesaid, and thereupon convey the land so entered by him to the said defendant corporation; and each and every one of the said entrymen was in fact so procured and hired to make his said entry and purchase by some one or more of the said conspirators pursuant to the said conspiracy, and in making the same acted therein, not for his own use and benefit, but with the intent and pursuant to an understanding then existing between him and the person or persons so procuring his entry that the land when so entered and purchased should be conveyed by him to the defendant Booth-Kelly Company

The entire expense attending the making of said entries and purchases, including the payment of the said purchase money and the said fees of the Register and Receiver and all other expenses and disbursements, was paid and borne by the said defendant corporation, and none of the said entrymen ever had any purpose or intention of entering or purchasing any of the said land for himself, or paid any money of

his own, whether borrowed or otherwise, for or on account of the said entry and purchase of the said land.

But the plaintiff alleges that in and by his aforesaid Timber and Stone Lands—Sworn Statement and the other affidavits, proofs, and documents filed with and submitted to the said Register and Receiver at and in the making of his said entry and purchase, each of said entrymen stated and represented in writing and under oath to the plaintiff, and the said Register and Receiver and the officials in the plaintiff's General Land Office, whose duty it was to decide whether the said patents, or any thereof, might lawfully be issued, among other things, that he, such entryman, did not apply to purchase the said land on speculation, but in good faith to appropriate it to his own exclusive use and benefit, and that he had not, directly or indirectly, made any agreement or contract, in any way or manner, with any person or persons whomsoever, by which the title he might acquire from the Government of the United States might inure in whole or in part to the benefit of any person except himself; which said statements and representations the plaintiff avers, were and are, one and all, wholly false, fraudulent and untrue, and were made by the said respective entrymen, by procurement as aforesaid, for the purpose of deceiving the plaintiff and its officials, and without any belief that such statements and representations, or any thereof, were true. The moneys paid, as aforesaid, at the said Land Office, by way of fees and in purchase of the said lands, were paid in the guise of moneys of the said

respective entrymen, and throughout the said Land Office proceedings the said applications, entries, and purchases were represented and in all things made to appear as the respective applications, entries, and purchases of the said entrymen in whose respective names they purported to be made, as aforesaid.

#### V.

The plaintiff's said officials believed and relied upon the said false and fraudulent representations, were deceived thereby and by said fraudulent devices and false appearances, and were at all times prior to the issuance of said patents in ignorance of the said conspiracy and of the aforesaid purpose and fraudulent character of the said entries and purchases, and because of such belief, reliance, deception and ignorance, and not otherwise, caused the said entries and purchases to be allowed and the said Receiver's receipts, Register's certificates, and patents to be issued in manner and form as hereinbefore alleged.

#### VI.

Some time after the said 7th day of May, 1902, the exact date being unknown to the plaintiff, the said Edward Jordan, by his certain deed conveyed the legal title to the land so entered and purchased by him, as aforesaid, to the defendant Booth-Kelly Company, which deed was thereafter placed of record in the office of the Recorder of Deeds of Lane County, Oregon.

On or about the 7th day of May, 1907, the said Stephen A. La Raut, by his certain deed of that date, conveyed the legal title to the land so entered and

purchased by him, as aforesaid, to the defendant, Booth-Kelly Company, which deed was afterwards placed of record in the office of the Recorder of Deeds of Lane County, Oregon.

On or about the 7th day of May, 1907, the said Alice La Raut, by her certain deed of that date, conveyed the legal title to the land so entered and purchased by her, as aforesaid, to the defendant, Booth-Kelly Company, which deed was afterwards placed of record in the office of the Recorder of Deeds of Lane, County, Oregon.

On or about the 6th day of September, 1907, the said Ethel M. La Raut, by her certain deed of that date, conveyed the legal title to the land so entered and purchased by her, as aforesaid, to the defendant, Booth-Kelly Company, which deed was afterwards placed of record in the office of the Recorder of Deeds of Lane County, Oregon.

On or about the 6th day of September, 1907, the said Lucy La Raut, by her certain deed of that date, conveyed the legal title to the land so entered and purchased by her, as aforesaid, to the defendant, Booth-Kelly Company, which deed was afterwards placed of record in the office of the Recorder of Deeds of Lane County, Oregon.

And the said defendant Booth-Kelly Company, under and by virtue of the said entries and purchases and the said patents subsequently issued, as aforesaid, and the said deeds, now falsely and fraudulently claims to be vested with full ownership in equity as well as at law in and to all and singular the said lands,

so entered, purchased and patented, and has entered into possession thereof, and now threatens and intends to cut and remove and convert to its own use the timber standing and growing thereon.

The plaintiff, however, avers that the said several conveyances by the said respective entrymen were made wholly in pursuance of their said several and unlawful understandings to that end existing at and prior to the several times when their respective entries and purchases were made, as aforesaid, and were solicited and directed by the said agents of the defendant Booth-Kelly Company acting in pursuance of the said conspiracy; that no consideration or considerations were paid to the said entrymen, or any of them, for or on account of their said respective conveyances, or any of them, save and except such moneys of the defendant corporation as were indirectly and secretly paid to them for and on account of their respective services in the making of the said entries and purchases, as aforesaid, as well as in the making of the said conveyances; and that the said defendant Booth-Kelly Company received and accepted said conveyances with full notice and knowledge of the aforesaid purpose and fraudulent character of the said entries and purchases, and in pursuance of the said unlawful and corrupt conspiracy.

All of which actions, doings, and pretenses of the said defendants are contrary to equity and good conscience, and tend to the manifest injury of the plaintiff in the premises.

IN CONSIDERATION WHEREOF, and foras-

much as the plaintiff is without full and adequate remedy in the premises save in a court of equity, and to the end that the said defendants, Booth-Kelly Company, Edward Jordan, Stephen A. La Raut, Alice La Raut, Ethel M. La Raut and Lucy La Raut, may make full, true and direct answer to all and singular the matters and things hereinbefore set out as fully as if they had been particularly interrogated thereunto, but not under oath, their answers under oath being hereby expressly waived; and to the end that the said patents may be declared null and void, and be set aside, revoked and held for naught, and be delivered up and surrendered by the defendants, under the Court's command, for cancellation; and that the said several described deeds of conveyance may be declared fraudulent and void, and may in like manner be delivered up and surrendered for cancellation; and that all and singular the said described lands may be adjudged and decreed to be the perfect property of the plaintiff free and clear of all claims of the defendants; and that the defendant Booth-Kelly Company may be ordered, adjudged and decreed to execute and deliver to the plaintiff a good and sufficient deed or deeds conveying the said lands, free and clear of all liens, encumbrances, outstanding claims or clouds whatsoever, to the plaintiff in fee simple absolute; and that the defendant Booth-Kelly Company, during the progress of this cause, and thereafter finally and perpetually, may be enjoined from setting up any claim to the said lands, or any part thereof, from creating any cloud upon the plaintiff's title to the same, or any

part thereof, and from cutting, or removing, or converting to its own use any of the timber standing or growing thereon, or otherwise committing waste or damage thereto; and that the possession thereof may be restored to the plaintiff; and that the plaintiff may have such other and further relief as may seem just to this Honorable Court and agreeable to equity and good conscience.

May it please your Honors to grant unto the plaintiff a writ of subpoena, to be directed to the said defendants, Booth-Kelly Company, Edward Jordan, Stephen A. La Raut, Alice La Raut, Ethel M. Laraut and Lucy La Raut, thereby commanding them and each of them at a time certain and under a certain penalty, therein to be limited, to appear before this Honorable Court and then and there full, true and direct answer make to all and singular the premises, and to stand to, perform and abide by such orders, directions, and decrees as may be made against them and each of them in the premises, as shall seem meet and agreeable to equity.

GEO. W. WICKERSHAM,  
Attorney General of the United States.

JOHN McCOURT,  
United States Attorney for the District of Oregon.  
UNITE DSTATES OF AMERICA,  
District of Oregon—ss.

I, John McCourt, United States Attorney for the District of Oregon, being first duly sworn on oath say: That the facts set forth in the foregoing bill of

complaint are true as I verily believe; that this affidavit is made upon reports furnished me by the duly authorized agent and officers of the General Land Office of the United States and upon affidavits made and furnished by the said officers, all of which reports and affidavits are in my possession.

JOHN McCOURT,

Subscribed and sworn to before me this 24th day of May, 1910.

(Seal.)

VIVIAN FLEXNER,  
Notary Public for Oregon.

[Endorsed]: Bill of Complaint. Filed May 24, 1910.

G. H. MARSH,  
Clerk.

And afterwards, to-wit, on the 21 day of September, 1910, there was duly filed in said Court, an Answer in words and figures as follows to-wit:

**[Answer.]**

*In the Circuit Court of the United States, for the  
District of Oregon.*

THE UNITED STATES of AMERICA,

Plaintiff,

vs.

THE BOOTH-KELLY LUMBER COMPANY, a  
corporation, EDWARD JORDAN, STEPHEN A. LA RAUT, ALICE LA RAUT, ETHEL M. LA RAUT, and LUCY LA RAUT,

Defendants.

ANSWER OF DEFENDANTS THE BOOTH-KELLY LUMBER COMPANY, STEPHEN A. LA RAUT, ALICE LA RAUT, ETHEL M. LA RAUT AND LUCY LA RAUT, TO THE BILL OF COMPLAINT.

These defendants respectively now and at all times hereafter saving to themselves all and all manner of benefit of exception or otherwise, that can or might be had or taken to the many errors, uncertainties and imperfections in the said bill contained, for answer thereto, or to so much thereof as these defendants are advised it is material or necessary for them to make answer to, severally answering say:

I.

These defendants admit that the Booth-Kelly Lumber Company, sued herein as the "Booth-Kelly Company," was on and prior to the 14th day of February, 1902, and ever since has been and still is a corporation organized and existing under and by virtue of the laws of the State of Oregon, with its principal offices and place of business at Eugene, in the State of Oregon.

II.

These defendants admit all the allegations contained in the second paragraph of said bill of complaint to be true as therein alleged.

III.

These defendants admit all of the allegations contained in the third paragraph of the bill of complaint to be true as therein alleged.

## IV.

These defendants deny that each or any one of said entries was made wholly or at all at the solicitation, or by the procurement of defendant Booth-Kelly Lumber Company, acting by or through certain or any of its officers, agents or hirelings thereto, by the said defendant corporation authorized or directed, or otherwise or at all, or that they, or any of them, in the interest of or by authority from the said defendant corporation, prior to the several times when the said Timber and Stone Lands Sworn Statements were taken, made or filed, or at any other time or at all, or for the purpose of defrauding the plaintiff of the title, possession or use of said lands, or of procuring such title, use or possession to become vested in the said defendant corporation, or of procuring for the said Booth-Kelly Lumber Company, indirectly or covertly, or otherwise or at all, the lands involved in this suit, under the said Acts of Congress referred to in said bill of complaint, or otherwise or at all, or that these defendants or any of them fraudulently or corruptly, or otherwise or at all, conspired together to procure or hire each of said entrymen for some small sum, or any sum, of defendant corporation's money to be paid to him for his services therein, or otherwise or at all, to make the said entry as aforesaid, or otherwise or at all, or thereupon convey the land so entered by him to the said defendant corporation, or that each or every one of said entrymen, or any of said entrymen, were in fact so procured or hired to make said entry or purchase by some one or more of

said or any conspirators, pursuant to the said or any conspiracy, or in making the same, or otherwise or at all, acted therein, not for his own use or benefit, or with the intent, or pursuant to an understanding or any understanding then or at all, or at any time existing between him or the person or persons so procuring his entry, that the land, when so entered and purchased should be conveyed by him to the defendant, Booth-Kelly Lumber Company, or otherwise or at all.

These defendants deny that the entire or any expense attending the making of said entries or purchase, including the payment of said purchase money, or the said fees of register or receiver, or all other expenses or disbursements, or any expenses or disbursements, were paid or borne by the said defendant corporation, or that none of said entrymen ever had any intention of entering or purchasing any of said land for himself, or paid any money of his own, whether borrowed or otherwise, for or on account of said entry, or the purchase of said land.

V.

These defendants admit that in and by the aforesaid Timber and Stone Lands Sworn Statement, and the other affidavits, proofs and documents filed with and submitted to the said Register and Receiver, at and in the making of said entry and purchase, each of said entrymen stated and represented in writing and under oath to the plaintiff and the said Register and Receiver, and the officials in the plaintiff's General Land Office, whose duty it was to decide whether the said patents or any of them might lawfully be issued,

among other things, that he, such entryman, did not apply to purchase the said land on speculation, but in good faith, to appropriate it to his own exclusive use and benefit, and that he had not, directly or indirectly, made any agreement or contract, in any way or manner, with any person or persons whomsoever, by which the title he might acquire from the Government of the United States might inure, in whole or in part, to the benefit of any person except himself. But these defendants and each of them do deny that the said statements or representations or any of them, were or are wholly or at all false, fraudulent or untrue, or were made by the said respective entrymen or any of them by procurement as aforesaid or otherwise, for the purpose of deceiving the plaintiff or its officials, or without belief that such statements or representations, or any of them, were true; and they deny that the moneys paid at the said Land Office by way of fees, or for the purchase of said lands, or any part thereof, were paid in the guise of moneys of the respective entrymen, or that throughout the said Land Office proceedings, the said applications, entries or purchases were represented or in all things made to appear as respective application, entries or purchases of said entrymen, in whose respective names they purported to be made, as aforesaid, or otherwise or at all, except as the bona fide applications, entries and purchases of the said several entrymen.

These defendants deny that the plaintiff's said officials, or any of them, believed or relied upon the said or any false or fraudulent representations, or were

deceived thereby, or by said or any fraudulent device or false appearances, or otherwise or at all, or were at any time prior to the issuance of said patents in ignorance of said conspiracy, or of the aforesaid purpose or fraudulent character of said entries and purchases, or because of such belief, reliance, deception or ignorance, and not otherwise, caused the said entries and purchases to be allowed, and the said Receiver's receipt, Register's certificates and patents to be issued, in manner and form as in said bill alleged, or otherwise or at all.

## VI.

These defendants admit that on the 22nd day of July, 1902, the said Edward Jordan, by his deed duly conveyed the legal title to the land so entered and purchased by him to the defendant, the Booth-Kelly Lumber Company, which deed was thereafter placed of record in the office of the Recorder of Deeds of Lane County, Oregon, and they admit that on or about the 7th day of May, 1907, the others of the said entrymen, to-wit, Stephen A. La Raut, Alice La Raut, Ethel M. La Raut and Lucy La Raut, by their deeds of that date conveyed the legal title to the land so entered and purchased by them as aforesaid, to the defendant Booth-Kelly Lumber Company, which deeds were afterwards placed of record in the office of the Recorder of Deeds of Lane County, Oregon, as alleged in the said bill of complaint, and that all of the said deeds except the one from Edward Jordan were made to the said defendant, Booth-Kelly Lumber Company, after the patents had issued to said entrymen for said land.

These defendants admit that the said defendant Booth-Kelly Lumber Company, under and by virtue of said entries and purchases, and the patents issued for said land as aforesaid, and the said deeds, now claims to be and is vested with the full ownership in equity as well as at law, in and to all and singular the said lands so entered, purchased and patented, and has entered into the possession thereof as such owner, but these defendants deny that said claim of ownership was or is falsely or fraudulently made, or otherwise than in good faith, and in pursuance of the bona fide purchase of said land from said entrymen, as hereinafter alleged; and they deny that the said defendant, Booth-Kelly Lumber Company, now threatens to cut or remove or convert to its own use the timber growing or standing upon sale land, or any part thereof.

These defendants deny that the several conveyances by the said respective entrymen, or any one of them, were made wholly or at all in pursuance of their said several or unlawful understandings or any understanding to the end, existing at or prior to the several times when their respective entries or purchases were made as aforesaid, or otherwise or at all, or were solicited or directed by the said agents, or any agents, of defendant Boot-Kelly Lumber Company, acting in pursuance of said or any conspiracy, and they deny that no consideration or considerations were paid to the said entrymen or any of them, for or on account of said respective conveyances or any of them save or except such moneys of defendant corpo-

ration as were indirectly or secretly or otherwise paid to them for or on account of their respective or any services, in the making of an entry or purchase, as aforesaid, as well as in the making of said conveyances, or otherwise or at all, or that the said defendant, Booth-Kelly Lumber Company, received or accepted said conveyances or any of them with full or any knowledge of the aforesaid purpose or fraudulent character of said entries or purchases, or in pursuance of said unlawful or corrupt conspiracy, or any conspiracy whatsoever.

And the Defendant, the Booth-Kelly Lumber Company, further answering the said Bill of Complaint, alleges:

I.

That this defendant is informed and believes, and therefore alleges that after the said several entries mentioned in said bill were made by said several entrymen, charges were made and filed with the complainant's officials in the Interior Department whose duty it was to investigate and determine the same, that said entries were fraudulent in character, and were made for the benefit of this defendant, and that said charges were fully investigated by the Interior Department for the purpose of ascertaining the truth or falsity of said charges, and to determine whether patents should be issued upon said entries, or whether the same should be cancelled and that such proceedings were had in said matters that said several entries were fully investigated, by complainant's officials charged with that duty, and testimony and affidavits

were taken upon said investigation, and the complainant and said entrymen were duly represented at said hearing and investigation, and that upon a full investigation and hearing upon said charges, and with full knowledge of all the facts, it was found and determined by the said officials that said entries were not fraudulent, and that the irregularities in said entries, if any, were not of sufficient gravity to require or justify the cancellation of said entries, and ordered that patents issue upon said entries for said land, and that patents were thereupon issued therefor, as alleged in said bill of complaint.

That said officials were given by law and had full jurisdiction to hear and determine all of the said charges and matters mentioned in the said bill of complaint, and in this answer, and that their decision and determination thereof, as hereinbefore alleged, was and is final and conclusive, and this defendant pleads the same in bar of this suit.

And for further answer to said bill of complaint, the defendant the Booth-Kelly Lumber Company, alleges that on the 22nd day of July, 1902, the said Edward Jordan had become and was the equitable owner of the said land entered and purchased by him, by virtue of his purchase thereof, and the Receiver's Final Receipt issued to him therefor, and that all of the proceedings set forth in the said bill of complaint as having been done and taken in procuring the issuance of said Final Receipt for said land, and as described therein, were regular, legal and valid upon their face, and appeared upon their face to have been

duly and regularly done and taken, in conformity with the laws of the United States, and rules and regulations of the Interior Department relating thereto, and in compliance therewith.

That on or about the said 22nd day of July, 1902, this defendant purchased the said land so entered by the said Edward Jordan from the said Edward Jordan for the sum of about \$550.00, which was actually advanced and paid to and for his use and benefit, and received a warranty deed from him therefor, relying upon the said Final Receipt for said land, and believing that all the proceedings anterior thereto were bonafide, true and genuine in all respects, and relying upon the determination made by the land officers of the complainant, in issuing the said Final Receipt, and that on the 3rd day of August, 1904, a patent was duly issued to said Edward Jordan for said land, in pursuance of said entry, final receipt and purchase, as alleged in the said bill of complaint.

That on the 7th day of May, 1907, the said defendants, Stephen A. La Raut, Alice La Raut, Ethel M. La Raut and Lucy La Raut, by virtue of the several patents issued to them as set forth in the said bill of complaint, had become and were seized and possessed of the full legal and equitable ownership of said land granted by said patents, and that all the proceedings set forth in said bill of complaint as having been done and taken in procuring the issuance of said patents for said land described in the said bill of complaint, and as set forth therein, were regular, legal and valid upon their face, and appeared upon their

face to have been duly and regularly done and taken in conformity with law and the rules and regulations of the Interior Department, of the complainant, relating thereto, and in compliance therewith.

That on the said 7th day of May, 1907, this defendant purchased the said land described in said bill of complaint, as having been patented to said Stephen A. La Raut, Alice La Raut, Ethel M. La Raut and Lucy La Raut, from them for the sum of about \$600.00, advanced and paid to and for their use and benefit for each of said claims, respectively, which said sum was actually advanced and paid to and for each of them by this defendant therefor, relying upon the patents of the United States, complainant herein, for said land, and believing that all the proceedings anterior thereto were bona fide, true and genuine in all respects, and relying upon the determination made by the land officers of the complainant in issuing the patents for said land and on the said 7th day of May, 1907, the said Stephen A. La Raut, Alice La Raut, Ethel M. La Raut and Lucy La Raut, executed and delivered to this defendant for the consideration aforesaid, good and sufficient warranty deeds for said land, duly and legally conveying the same to this defendant.

And this defendant alleges that the said several sums of money so paid and advanced to and for the said several entrymen mentioned in said bill of complaint, by this defendant, as hereinbefore alleged, were paid by this defendant truly and bona fide, and without any notice prior thereto or prior to the issu-

ance of said patents or the delivery of said deeds therefor to this defendant, of any of the pretended fraudulent acts, representations or statements or things in the said bill of complaint set forth, and without any reason to believe or suspect that here had been any fraud or misrepresentations of any kind whatever, in any of the matters, proceedings or doings of any one leading up to and including the issuance of said patents for said land, or that all or any of said matters, proceedings and doings had not been wholly, reasonably, properly and truthfully done and completed, in accordance with the laws of the United States, and rules and regulations of the Interior Department of the complainant, relating thereto, and therefore this defendant alleges that it was and is a bona fide purchaser of the said land for the full value thereof, and without any notice of any of the misrepresentations, frauds or statements set forth in the said bill of complaint.

And these defendants deny all and all manner of unlawful combination and confederacy wherewith they are charged by the said bill of complaint, without this, that there is any other matter, cause or thing in the said complainant's said bill of complaint contained, material or necessary for these defendants to answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed and avoided or denied, is true to the knowledge or belief of these defendants; all of which matters and things these defendants are ready and willing to aver, maintain and prove, as this Honorable Court shall direct;

and humbly pray to be hence dismissed with the reasonable costs and charges in this behalf most wrongfully sustained.

WOODCOCK & SMITH and  
ALBERT H. TANNER,

Solicitors for Defendants Booth-Kelly Lumber  
Company, Stephen A. La Raut, Alice La Raut,  
Ethel M. La Raut and Lucy La Raut.

UNITED STATES OF AMERICA,

State of Oregon,

County of Multnomah.

I, A. C. Dixon, being first duly sworn say: that I am the manager of the Booth-Kelly Lumber Company, one of the defendants above named, and have heard the foregoing answer read, and know the contents thereof, and that the same is true as I verily believe.

A. C. DIXON.

Subscribed and sworn to before me this 17 day of September, 1910.

(Seal.)

MALID H. HENRY,  
Notary Public for Oregon.

[Endorsed]: Answer. Filed September 21, 1910.

G. H. MARSH,  
Clerk.

And afterwards, to wit, on the 11 day of November, 1910, there was duly filed in said Court, a a replication in words and figures as follows to wit.

[Reply.]

*In the Circuit Court of the United States, for the  
District of Oregon.*

THE UNITED STATES of AMERICA,

Plaintiff,

vs.

THE BOOTH-KELLY LUMBER COMPANY, a  
corporation, EDWARD JORDAN, STEPH-  
EN A. LA RAUT, ALICE LA RAUT, ETH-  
EL M. LA RAUT, and LUCY LA RAUT.

Defendants.

THE REPLICATION OF THE PLAINTIFF  
IN THE ABOVE ENTITLED CAUSE TO THE  
ANSWER OF DEFENDANTS THE BOOTH-  
KELLY LUMBER COMPANY, STEPHEN A. LA  
RAUT, ALICE LA RAUT, ETHEL M. LA RAUT  
AND LUCY LA RAUT, TO THE BILL OF COM-  
PLAINT.

This repliant, by John McCourt, United States At-  
torney in and for the District of Oregon, saving and  
reserving all advantage of exception to the manifold  
insufficiencies of said answer, for replication thereto,  
saith:

That it will aver and prove its said bill to be true  
and sufficient and that the said answer is untrue and  
insufficient,

WHEREFORE, Repliant prays relief as in said bill  
it hath already prayed.

JOHN McCOURT,

United States Attorney.

[Endorsed]: Replication. Filed Nov. 11, 1910.

G. H. MARSH,

Clerk, District of Oregon.

And afterwards, to wit, on Thursday, the 17 day of November, 1910, the same being the 40 Judicial day of the Regular October Term of said Court; Present: the Honorable CHAS. E. WOLVERTON United States District Judge presiding, the following proceedings were had in said cause, to-wit:

**[Order Referring Cause to Examiner.]**

*In the Circuit Court of the United States, for the  
District of Oregon.*

THE UNITED STATES of AMERICA,

vs.

BOOTH-KELLY LUMBER COMPANY.

No. 3633.

November 17, 1910.

Now, at this day, comes the plaintiff by Mr. John McCourt, United States Attorney, and states to the Court that the plaintiff above named desires the testimony to be adduced in this cause be taken orally, and move the Court for an order referring this cause to George A. Brodie, the Standing Examiner of this Court; IT IS, THEREFORE, ORDERED that this cause be, and the same is hereby, referred to George A. Brodie, the Standing Examiner of this Court, to take and report to the Court the testimony to be offered in this cause by either of the parties hereto.

And afterwards, to wit, on the 19 day of September, 1910, there was duly filed in said Court, a Stipulation in words and figures as follows to-wit:

[Stipulation in Amendment of Answer.]

*In the Circuit Court of the United States, for the  
District of Oregon.*

THE UNITED STATES of AMERICA,

Plaintiff,

vs.

THE BOOTH-KELLY LUMBER COMPANY, a  
corporation, EDWARD JORDAN, STEPH-  
EN A. LA RAUT, ALICE LA RAUT, ETH-  
EL M. LA RAUT and LUCY LA RAUT,  
Defendants.

It is hereby stipulated and agreed between the plaintiff and the defendants, the Booth-Kelly Lumber Company and Ethel M. La Raut and Lucy La Raut, by their respective attorneys, that the answer heretofore filed by them in the above entitled cause may be considered and treated as amended in the following particulars, to-wit:

1. So as to admit that the defendant the Booth-Kelly Lumber Co. is the holder of the legal title to the lands entered by and patented to Ethel M. La Raut and Lucy La Raut, but denying that it is the equitable owner of said land, and alleging affirmatively that said Ethel M. La Raut, now Ethel M. Lewis, and Lucy La Raut ever since said patents were issued to them have been and now are the equitable owners of said land, and that the deeds made by them to the Booth-Kelly Lumber Company were intended to be and were in fact mortgages, to secure the payment of certain advances made and to be made to them by said company, to enable them to enter and

pay for said land, and for other purposes.

2. Omitting and striking out from said answer the further and separate defense set up in the plea of bona fide purchase on the part of the defendant, Booth-Kelly Lumber Company, as to the said lands entered and patented to Ethel M. La Raut and Lucy La Raut.

And that as so amended, said answer shall stand as the answer of said defendants, without the filing of a formal amended answer to that effect, unless the Court shall order such amended answer to be filed.

JOHN McCOURT,

Attorney for Plaintiff.

WOODCOCK & SMITH and A. H. TANNER.

Attorneys for Defendant.

[Endorsed]: Filed December 19, 1910.

G. H. MARSH,

Clerk.

And afterwards, to wit, on Wednesday, the 19 day of July, 1911, the same being the 85 Judicial day of the Regular April Term of said Court; Present: the Honorable R. S. BEAN, United States District Judge presiding, the following proceedings were had in said cause, to-wit:

**[Record of Trial—Final Hearing.]**

*In the Circuit Court of the United States, for the  
District of Oregon.*

THE UNITED STATES of AMERICA,

No. 3633

vs.

BOOTH-KELLY LUMBER COMPANY, et al.

July 19, 1911.

Now, at this day, come the plaintiff by Mr. John McCourt, United States Attorney, and the defendants by Mr. A. C. Woodcock and Mr. A. H. Tanner, of counsel; Whereupon, this cause comes on for final hearing upon the pleadings and the proofs herein. And the Court having heard the arguments of counsel, will advise thereof.

And afterwards, to wit, on the 9th day of October, 1911, there was duly filed in said Court, an Opinion in words and figures as follows to-wit:

**[Opinion of the Court.]**

*In the Circuit Court of the United States, for the  
District of Oregon.*

No. 3633.

THE UNITED STATES OF AMERICA,

Complainant,

vs.

BOOTH-KELLY COMPANY, a corporation, ED-  
WARD JORDAN, STEPHEN A. LA RAUT,  
ALICE LA RAUT, ETHEL M. LA RAUT  
and LUCY LA RAUT.

Defendants.

John McCourt, U. S. Attorney, for government.

Albert H. Tanner, Attorney for Defendants.

Bean, District Judge:

This suit is brought by the government to cancel five patents for public lands issued to as many patentees under the Timber & Stone Act on the ground that the initial applications were made by the applicants

for the use and benefit of the defendant and under an agreement that they should convey the land to it. The defendant company denies the fraud charged and affirmatively pleads that it is the owner by purchase in good faith of three of the claims in controversy and that it holds the legal title to the other two as security for moneys advanced.

Whatever may have been the purpose of Congress in passing the Timber & Stone Act, or whatever uncertainty there may have been originally in its construction or its scope and effect as regards an entryman and his right to sell and transfer the land entered or about to be entered by him, it is now settled that all the statute denounces is a previous arrangement or agreement by which the land entered shall inure to the benefit of another, or in other words, the acting for another in the application. It therefore prohibits the making of contracts, express or implied, before or at the time of application to purchase whereby the entryman is to convey the title which he shall acquire from the government to some other person or, in short, from entering land ostensibly for himself but in reality for another, but it does not prohibit one who has applied for the purchase of land in good faith from selling or agreeing to sell the same to another after the application and before final proof, or from borrowing money from another with which to pay the purchase price. *U. S. v. Budd*, 144 U. S. 154; *U. S. vs. Williamson*, 207 U. S. 405; *U. S. vs. Biggs*, 211 U. S. 507. And under the rule in these cases, there is no inhibition against one intending in good faith to enter

land for himself from making arrangements in advance of his application to borrow the money with which to pay the expenses and purchase price. The inquiry at hand is therefore directed to the sole question whether there was an agreement between the entrymen and the defendant company prior to the entry, by which the land should inure to the benefit of the latter. Patent has been issued, and it must be presumed that the intent of the entrymen was innocent and that the entries were made in good faith for their own use and benefit as stated in their applications. The burden is on the government to overcome this presumption by clear and convincing proof. Mere inference or conjecture or suspicion is not enough and especially in a case like the one at bar where, if the particular wrong charged be established, the money paid for the land will be forfeited to the government, for in such case, as said by Mr. Justice Brewer in *U. S. vs. Budd*, *supra*, it is "imperative that no decree should be passed against the defendants unless the wrong be clearly and fully established."

Now, so far as the four La Raut claims are concerned, there is no direct testimony to support the averments of the bill. Indeed it is all to the contrary, and to the effect that the entries were made for the exclusive use and benefit of the entrymen and that there was no agreement, express or implied, that the land should be conveyed to the defendant company, or that the entrymen made the entries in reality for such company, or any other person. The circumstances relied upon by the government to overcome this testi-

mony are the facts that the land had been cruised by the company prior to the entry, and was shown the entrymen by an employe of the defendant. The money with which to pay the expenses attending the entry and the purchase price was furnished by the company, and it paid each entryman an additional \$100.00 a short time thereafter. All the moneys paid out in the matter were charged by the bookkeeper to its Stumpage Account. Deeds were subsequently made by the entrymen to the defendant, and it has exercised dominion over the property and paid the expenses thereon. But this is explained by undisputed testimony. The La Rauts' are relatives of Mr. Booth, who was the manager of the company at the time the filings were made. They were poor and had no means of their own, but like many others at that time were anxious to secure lands under the Timber & Stone Act. Miss Ethel, on behalf of herself and the others, asked Mr. Booth for his assistance and he told her that if he should learn of suitable claims open to entry he would advise them and would advance the money necessary to pay the purchase price and expenses. He was subsequently informed through reports of cruisers employed by his company of several claims open to entry and he thereupon informed the La Rauts' and directed the defendant's bookkeeper to attend to the matter for him, paying the expenses, keeping a proper record thereof so that the actual amounts advanced to each applicant could be ascertained and determined. Mr. Booth guaranteed the repayment of the money to the company and after final proof

took deeds to the lands to himself, as security therefor. Some time thereafter, when he resigned as manager he explained the matter to his successor and it was agreed that the company should carry the loans and consequently the deeds to Booth were destroyed and new ones made to he defendant as security. Subsequently Stephen A. La Raut and wife, desiring to move to Canada, offered to sell their claims to the defendant company and after some negotiations they were purchased by Mr. Kelly, the then manager, at a price satisfactory to them, and the land conveyed to it. The other claims still belong to Ethel and Lucy La Raut, the company holding title as security. The fact that the money was advanced by the company and the manner in which the books were kept, as well as the circumstances surrounding the entry, are suspicious and, standing alone, tend strongly to support the government's contention, but with the explanation given by the witnesses they are not sufficient to overcome the respect due to the patents or the presumption which attended their issuance.

The Jordan claim stands on a different footing. Jordan testifies that at the time of his entry he was an employe of the defendant company at Coburg. That Mr. Kelly, the defendant's vice-president and purchasing agent, called him on the telephone and asked him if he did not want to take a timber claim for him. That he (Jordan) went to Eugene in response to the message and saw Mr. Kelly, and it was then agreed that he should take a claim as selected or shown him an agent of the company, and that it should furnish

the money necessary to pay the purchase price and all expenses attending the entry and pay him \$100.00 for his trouble. That in pursuance of this arrangement, he was furnished a description of the land by Mr. Kelly and told who would show him the land. After examining the land, he filed on it and subsequently made the required proof. The defendant paid all the expenses and the purchase price, arranged to furnish the proof witnesses, attended to the advertising and all business connected with the entry and as soon as final proof Jordan delivered the receipt to Kelly. Shortly thereafter Kelly brought over to Coburg a deed conveying the land to the defendant company and he (Jordan) signed it and Kelly paid him the \$100.00 less \$35.00, which was owing from him to Kelly. That he took the land not for his own use and benefit but for the defendant company. His testimony in this respect is confirmed by the entries in the books and the circumstances attending the entry. Mr. Kelly says there is no previous arrangement between himself and Jordan by which the land should be conveyed to the company. He admits, however, that Jordan filed on the land in pursuance of telephone message from him and that before doing so Jordan asked him what he was to get out of it and he says that he explained that he could not make any agreement at that time as it was against the law. It maybe and I think it is quite probable that there was no agreement in express terms between Jordan and Kelly that the land should be entered for the defendant but the entire circumstances, together with Jordan's

testimony, leave it practically unquestioned that whether such an agreement was made or not, Jordan understood that the land was not to be taken for himself but for the defendant and that such was the understanding of Kelly.

It follows therefore that a decree should be entered cancelling the Jordan patent but the bill will be dismissed as to the four La Raut patents.

[Endorsed]: Filed October 9, 1911.

G. H. MARSH,  
Clerk.

And afterwards, to wit, on the 9 day of October, 1911, there was duly filed in said Court, a Decree in words and figures as follows to-wit:

**[Decree.]**

*In the Circuit Court of the United States, for the  
District of Oregon.*

THE UNITED STATES of AMERICA,  
Plaintiff,

vs.

THE BOOTH-KELLY LUMBER COMPANY, a  
corporation, EDWARD JORDAN, STEPH-  
EN A. LA RAUT, ALICE LA RAUT, ETH-  
EL M. LA RAUT and LUCY LA RAUT,  
Defendants.

This cause came on regularly for trial before the Court, upon the testimony taken and reported to the Court by the examiner, and the exhibits and the pleadings in said cause, the plaintiff appearing by Mr. John McCourt, United States Attorney for Oregon,

and said defendants the Booth-Kelly Lumber Company, Stephen A. La Raut, Alice La Raut, Ethel M. La Raut and Lucy La Raut appearing by Mr. A. C. Woodcock and Mr. A. H. Tanner, their attorneys, and Edward Jordan not appearing, a decree being taken against him pro confesso, and having duly considered the evidence and exhibits, and arguments of the counsel, and the Court being now fully advised in the premises;

It is Ordered, Adjudged and Decreed by the Court that the patent heretofore, to-wit, on the 3rd day of August, 1904, issued to Edward Jordan, for lots 7, 8, 9 and 10 of Section 2, in Township 22 South of Range 2 West, of the Willamette Meridian, and the deed from said Edward Jordan and wife to the said Booth-Kelly Lumber Company to the said land, which said patent and deed are particularly mentioned and referred to in the plaintiff's Bill of Complaint, be and the same are hereby set aside, cancelled and held for naught, and that said plaintiff herein be and it is hereby decreed to be the owner of said real property, free and clear of all claims of the said defendants, and that the said defendant the Booth-Kelly Lumber Company execute and deliver to the plaintiff a good and sufficient deed conveying the said land to the plaintiff in fee simple absolute, and that in case it shall fail, neglect or refuse to make such deed that this decree shall operate as such deed of conveyance.

It is further ordered, adjudged and decreed by the Court that the plaintiff is not entitled to any relief in this suit against any of the said defendants as to the

said patents issued to the said Stephen A. La Raut, Alice La Raut, Ethel M. La Raut and Lucy La Raut, particularly mentioned and set forth in the plaintiff's Bill of Complaint, or as to the said lands therein described, and that the plaintiff's complaint as to said lands be and the same is hereby dismissed.

It is further ordered, adjudged and decreed by the Court that neither of the parties to this suit shall recover costs or disbursements from the other.

R. S. BEAN,  
Judge.

[Endorsed]: Filed Oct. 19, 1911.

G. H. MARSH,  
Clerk.

By J. W. MARSH,  
Deputy.

And afterwards, to wit, on the 10 day of March, 1911, there was duly filed in said Court, testimony taken before Examiner, GEO. A. BRODIE, in words and figures as follows to wit:

**[Testimony and Exhibits.]**

*In the Circuit Court of the United States, for the  
District of Oregon.*

THE UNITED STATES of AMERICA,  
Plaintiff,

vs.

BOOTH-KELLY LUMBER COMPANY, a corporation, EDWARD JORDAN, STEPHEN A. LA RAUT, ALICE LA RAUT, ETHEL M. LA RAUT, and LUCY LA RAUT.

Defendant.

## STATE OF OREGON,

County of Multnomah—ss.

On this 19th day of December, 1910, at the hour of 1:30, o'clock, P. M., the parties herein appeared before George A. Brodie, Examiner of the above entitled Court, at the Grand Jury Room of said Circuit Court, in the City of Portland, Multnomah County, State of Oregon. The government appearing by Mr. John McCourt, District Attorney, and the defendants appearing by Messrs. A. H. Tanner and A. C. Woodcock, and thereupon, the following proceedings were had, to-wit:

Counsel for the government of the United States, offers in evidence, certified copies of the entry papers, including final proof papers, covering the entry of Edward Jordan, for lots 7, 8, 9 and 10, in Section 2, Township 22, South of Range 2, West of Willamette Meridian;—being the proceedings of all of the entries involved in this case, and upon which it is sought to set aside the patent thereto, and there being no objection, the same is received and filed, marked Plaintiff's Exhibit "A", and is in words and figures, as follows, to-wit:

DEPARTMENT OF THE INTERIOR,

General Land Office,

Washington, D. C.,

May 6, 1910.

I hereby certify that the annexed copies are true and literal exemplifications of the originals in the file of this office.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and caused the seal of this office to be affixed, at the City of Washington, on the day and year above written.

[Seal.]

JOHN O'CONNELL,

Acting Recorder of the General Land Office.

EDWARD JORDAN.

12124-1.

STATE OF OREGON,

County of Lane—ss.

I, C. J. Howard, being first duly sworn, say that I am the Foreman of BOHEMIA NUGGET. That said publication is a weekly newspaper, published and issued weekly and regularly at Cottage Grove, in Lane County, State of Oregon, and is of general circulation in said county and state. That the notice of which the one hereto attached is a true and correct copy, was published in said paper once a week for 9 weeks, being published 10 times; the first on the 28th day of February, 1902, and the last on the 2nd day of May, 1902. That said notice was published in the regular and entire issue of every number of said paper during said period and time of publication, and that the said notice was published in a newspaper proper and not in a Supplement.

C. J. HOWARD,

Subscribed and sworn to before me this 2nd day of May, 1902.

-----  
N. P.

NOTICE OF PUBLICATION.  
UNITED STATES LAND OFFICE.

Roseburg, Oregon, Feb. 14, 1902.

Notice is hereby given that in compliance with the provisions of the Act of Congress of June 3, 1878, entitled "An Act for the sale of timber lands in the States of California, Oregon, Nevada and Washington Territory," as extended to all the Public Land States by act of August 4, 1892, Edward Jordan, of Coburg, County of Lane, State of Oregon, has this day filed in this office, his sworn statement No. 2039, for the purchase of lots 7, 8, 9 and 10, of Section 2, Township 22, South of Range 2 West, and will offer proof to show that the land sought is more valuable for its timber or stone than for agricultural purposes, and to establish his claim to said land before the Register and Receiver of this office at Roseburg, Oregon, on Wednesday, the 7th day of May, 1902.

He names as witnesses:

Thomas Roache, of Eugene, Oregon, Dan Brumbaugh, of Coburg, Oregon, Oscar Lee, John Palmer, of Cottage Grove, Oregon.

Any and all persons claiming adversely the above described lands are requested to file their claims in this office on or before said 7th day of May, 1902.

J. T. BRIDGES,

Register.

12124-2

TIMBER LAND ACT JUNE 3, 1878—NOTICE  
FOR PUBLICATION.

United States Land Office.

Nugget. Roseburg, Oregon, Feb. 14, 1902.

Notice is hereby given that in compliance with the provisions of the Act of Congress of June 3, 1878, entitled "An act for the sale of timber lands in the States of California, Oregon, Nevada, and Washington Territory," as extended to all the Public Land States by act of August 4, 1892.

Edward Jordan, ....., of (town) or City Co-  
burg, county of Lane, State (or Territory) of Ore-  
gon, has this day filed in this office his sworn state-  
ment No. 2039, for the purchase of the Lots 7, 8, 9 and  
10, of Section No. 2, Township 22, South of Range 2  
W., and will offer proof to show that the land sought  
is more valuable for its timber or stone than for agri-  
cultural purposes, and to establish his claim to said  
land before the Register and Receiver of this office at  
Roseburg, Oregon, on Wednesday, the 7th day of  
May, 1902.

He names as witnesses:

Thomas Roche, of Eugene, Oregon.

Dan Brumbaugh, of Cottage Grove, Oregon.

Oscar Lee, of Cottage Grove, Oregon.

John Palmer, of Cottage Grove, Oregon.

Any and all persons claiming adversely the above  
described lands are requested to file their claims in  
this office on or before said 7th day of May, 1902.

J. T. BRIDGES,

Register.

This notice must be published once a week for ten  
consecutive weeks in a newspaper published nearest

the land, and must also be posted in a conspicuous place in the land office for the same period.

Certificate As to Posting of Notice.

UNITED STATES LAND OFFICE.

Roseburg, Oregon, May 7, 1902.

I, J. T. Bridges, Register of the Land Office, certify that the above notice was by me posted in a conspicuous place in my office during the period of sixty (60) days and over. I have first posted the same on the 14th day of Feb. 1902.

I further certify that there are no adverse claims to the land herein described known to this office.

J. T. BRIDGES,

Register

12124-3.

(This affidavit can be made only upon the personal knowledge of applicant derived from his own personal examination of the land.)

TIMBER AND STONE LANDS SWORN STATEMENT.

(To be made in duplicate.)

Land office at ROSEBURG, OREGON.

Date, FEBRUARY 14, 1902.

I, Edward Jordan, of (town or city) Coburg county of Lane, State (or Territory) of Oregon, desiring to avail myself of the provisions of the Act of Congress of June 3, 1878, entitled "An act for the sale of timber lands in the States of California, Oregon, Nevada, and in Washington Territory" as extended to

all the Public Land States by Act of August 4, 1892, for the purchase of the Lots 7, 8, 9 and 10, of Section 2, Township No. 22, South of Range, 2 W. in the district of lands subject to sale at Roseburg, Oregon, do solemnly swear that I am a native born citizen of the United States of the age of 27 years, and by occupation working man, that I have personally examined said land, and from my personal knowledge state that said land is unfit for cultivation, and valuable chiefly for its timber; that it is uninhabited, that it contains no mining or other improvement nor, as I verily believe, any valuable deposit of gold, silver, cinnabar, copper, or coal; that I have made no other application under said acts that I do not apply to purchase the land above described on speculation, but in good faith to appropriate it to my own exclusive use and benefit, and that I have not directly, or indirectly, made any agreement, or contract or in any way or manner, with any person, or persons whosoever by which the title I may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except myself, and that my post-office address is Coburg, Oregon.

EDWARD JORDAN,

I hereby certify that the foregoing affidavit was read to affiant in my presence before he signed his name thereto; that said affiant is to me personally known or has been satisfactorily identified before me by ....., and that I verily believe him to be the person he represents himself to be; and that this affidavit was subscribed and sworn to before

me this 14th day of February, 1902.

J. T. BRIDGES,

Register.

NOTE. Every person swearing falsely to the foregoing affidavit is guilty of perjury, and will be punished as provided by law for such offense. In addition thereto, the money that may be paid for the land is forfeited, and all conveyances of the land or of any right, title, or claim thereto are absolutely null and void, as against the United States.

In case the party has been naturalized, or has declared his intention to become a citizen, a certified copy of his certificate of naturalization or declaration of intention, as the case may be, must be furnished.

If the residence is in a city, the street and number must be given.

12124-4.

#### NON-MINERAL AFFIDAVIT.

(This affidavit can only be sworn to only on personal knowledge and cannot be made on information or belief.

The non-mineral Affidavit accompanying an entry of public land must be made by the party making the entry, and only before the officer taking the other affidavit required of the entryman.)

DEPARTMENT OF THE INTERIOR.

United States Land Office.

Roseburg, Oregon.

May 7, 1902.

Edward Jordan, being duly sworn according to law, deposes and says that he is the identical person who

is an applicant for Government title to the Lots 7, 8, 9 and 10, Sec. 2, Tp. 22, S. R." West; that he is well acquainted with the character of said described land and with each and every legal subdivision thereof, having frequently passed over the same; that his personal knowledge of said land is such as to enable him to testify understandingly with regard thereto; that there is not, to his knowledge, within the limits thereof, any vein, or lode of quartz, or other rock in place, bearing gold, silver, cinnabar, lead, tin, or copper, or any deposit of coal; that there is not within the limits of said land, to his knowledge, any placer, cement, gravel, or other valuable mineral deposit; that the land contains no salt spring, or deposits of salt in any form sufficient to render it chiefly valuable therefor; that no portion of said land is claimed for mining purposes under the local customs or rules of miners or otherwise; that no portion of said land is worked for mineral during any part of the year, by any person, or persons; that said land is essentially non-mineral land, and that his application therefor is not made for the purpose of fraudulently obtaining title to the mineral land, but with the object of securing said land for timber purposes, and that his post-office address is Coburg, Oregon.

EDWARD JORDAN.

I hereby certify that the foregoing affidavit was read to affiant in my presence before he signed his name thereto; that said affiant is to me personally known, and that I verily believe him to be a creditable person and the person he represents himself to be, and

that this affidavit was subscribed and sworn to before me at my office in Roseburg, Oregon, within the Roseburg, Oregon land district, on this 7th day of May, 1902.

J. T. BRIDGES,

Register.

NOTE. The officer before whom the deposition is taken should call the attention of the witness to the following section of the Revised Statutes, and state to him that it is the purpose of the Government, if it be ascertained that he testifies falsely, to prosecute him to the full extent of the law.

Revised Statutes of The United States. Title LXX, Crimes, Chp. 4.

Sec. 5392. Every persons who having taken an oath before a competent tribunal, officer, or person in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare ,depose or certify truly, or that any written testimony, declaration, or certificate by him subscribed is true, will fully and contrary to such oath, states or subscribes any material matter which he does not believe to be true, is guilty of perjury, and shall be punished by fine of not more than two thousand dollars, and by imprisonment, at hard labor, not more than five years; and shall, moreover, thereafter, be incapable of giving testimony in any court of the United States until such time as the judgment against him is reversed. (See Sec. 1750).

12124-5.

(The Testimony of two witnesses in this form,

taken separately, required in each case.)

TESTIMONY OF WITNESS UNDER ACTS  
OF JUNE 3, 1878, AND AUGUST 4, 1892.

Dan Brumbaugh, being called as a witness in support of the application of Edward Jordan, to purchase the Lots 7, 8, 9, and 10, of Section 2, Township 22, South of Range, 3 West, testifies as follows:

Question 1. What is your age, post-office address and where do you reside?

Answer. 36 years, Cottage Grove, Oregon, and I reside there.

Ques. 2. Are you acquainted with the land above described by personal inspection of each of its smallest legal subdivisions?

Ans. I am.

Ques. 3. When and in what manner was such inspection made?

Ans. I was over the land a number of times and the last Feb. 13, 1902.

Ques. 4. Is it occupied, or are there any improvements on it not made for ditch or canal purposes or which were not made by, or do not belong to the said applicant?

Ans. No.

Ques. 5. Is it fit for cultivation?

Ans. No.

Ques. 6. What causes render it unfit for cultivation?

Ans. It is too steep and rocky.

Ques. 7. Are there any salines, or indications of deposits of gold, silver, cinnabar, copper, or coal on

this land? If so, state what they are, and whether the springs or mineral deposits are valuable.

Ans. Nothing that I know of.

Ques. 8. Is the land more valuable for mineral or any other purposes than for the timber or stone thereon, or is it chiefly valuable for timber or stone?

Ans. Chiefly valuable for timber.

Ques. 9. From what facts do you conclude that the land is chiefly valuable for timber or stone?

Ans. Because it is mostly all timber.

Ques. 10. Do you know whether the applicant has directly or indirectly made any agreement or contract in any way or manner with any person whomsoever, by which the title which he may acquire from the Government of the United States may inure in whole or in part to the benefit of any persons except himself?

Ans. He has not to my knowledge.

Ques. 11. Are you in any way interested in this application or in the land above described, or the timber or stone salines, mines, or other improvements of any description whatever thereon?

Ans. No.

DAN BRUMBAUGH.

I hereby certify that each question and answer in the foregoing testimony was read to the witness before he signed his name thereto. And that the same was subscribed and sworn to before me this 7th day of May, 1902.

J. T. BRIDGES,

Register.

NOTE. The officer before whom the testimony is taken should call the attention of the witness to the following Section of the Revised Statutes and state to him that it is the purpose of the government, if it be ascertained that he testifies falsely, to prosecute him to the full extent of the law.

Title LXX, Crimes, Chap. 1.

Sec. 5392—Every person who, having taken an oath before a competent tribunal, officer, or persons in any case in which a law of the United States authorizes an oath to be administered that he will testify, declare, depose, or certify truly or that written testimony, declaration, deposition, or certificate by him subscribed as true, wilfully and contrary to such oath, states and subscribes any material matter which he does not believe to be true, is guilty of perjury, and shall be punished by a fine of not more than two thousand dollars and by imprisonment and hard labor not more than five years and shall moreover thereafter be incapable of giving testimony in any court of the United States until such time as the judgment against him is reversed.

(See Sec. 1750.)

12124-6.

(The testimony of two witnesses, in this form taken separately required in each case.)

TESTIMONY OF WITNESS UNDER ACTS of June 3, 1878, and August 4, 1892.

Thomas Roache, being called as a witness in support of the application Edward Jordan, to purchase the Lots 7, 8, 9, and 10, of Section 2, Township 22,

South of Range 2 West, testifies as follows:

Q. 1. What is your age, post-office address, and where do you reside?

A. 46 years, Eugene, Oregon, and I reside there.

Q. 2. Are you acquainted with the land above described? By personal inspection of each of its smallest legal sub-divisions?

A. I am.

Q. 3. When and in what manner was such inspection made?

A. I was over the land Feb. 13, 1902.

Q. 4. Is it occupied or there are any improvements on it not made for ditch or canal purposes, or which were made by or do not belong to the said applicant?

A. No.

Q. 5. Is it fit for cultivation?

A. No.

Q. 6. What causes render it unfit for cultivation?

A. It is too rough, very hilly and stony.

Q. 7. Are there any salines, or indications of deposits of gold, silver, cinnabar, copper, or coal on this land? If so, state what they are, and whether the spring or mineral deposits are valuable.

A. Nothing that we could see.

Q. 8. Is the land more valuable for mineral or any other purposes than for the timber or stone thereon? Or is it chiefly valuable for timber and stone.

A. Chiefly valuable for timber.

Q. 9. From what facts do you conclude that the land is chiefly valuable for timber or stone?

A. It is the only thing of value on the land that

I could see.

Q. 10. Do you know whether the applicant has directly or indirectly made any agreement or contract in any way or manner or with any person whomsoever, by which the title which he may acquire from the Government of the United States may inure in whole or in part to the benefit of any persons except himself?

A. Has not to my knowledge.

Q. 11. Are you in any way interested in this application, or in the lands above described, or the timber, or stone, salines, mines, or improvements of any description whatever thereon?

A. No.

THOMAS ROACHE.

I hereby certify that each question and answer in the foregoing testimony was read to the witness before he signed his name thereto, and that the same was subscribed and sworn to before me this 7th day of May, 1902.

J. T. BRIDGES,  
Register.

NOTE. The officer before whom the testimony is taken should call the attention of the witness to the following section of Revised Statutes, and state to him that it is the purpose of the Government if it be ascertained that he testifies falsely, to prosecute him to the full extent of the law.

Title LXX, Crimes, Chapter 4.

Sec. 5392. Every persons who, having taken an oath before a competent tribunal, officer, or person,

in any case in which a law of the United States authorizes an oath to be administered that he will testify, declare, depose or certify truly, or that any written testimony, declaration, deposition or certificate by him subscribed is true, wilfully and contrary to such oath, states and subscribes any material matter which he does not believe to be true, is guilty of perjury, and shall be punished by a fine of not more than two thousand dollars, and by imprisonment, at hard labor, not more than five years, and shall, moreover, thereafter be incapable of giving testimony in any court of the United States until such time as the judgment against him is reversed. (See Sec. 1750.)

(The Testimony of Claimant and Witness must be taken at the same time and before the Register and Receiver of the land district in which the land is situated.)

#### TIMBED AND STONE LANDS.

##### TESTIMONY OF CLAIMANT.

Edward Jordan, being called as a witness in support of his application to purchase the Lots 7, 8, 9, and 10, of Section 2, Township 22 S. Range, 2 West, testifies as follows:

Q. 1. What is your age, post-office address, and where do you reside?

A. 27 years, Coburg, Oregon, and I reside there.

Q. 2. Are you a native born citizen of the United States, and if so, in what State or Territory were you born?

A. I am; was born in Oregon.

Q. 3. Are you the identical person who applied to

purchase this land on the 14th day of February, 1902, and made the sworn statement assigned by law before the Register (or Receiver) on that day?

A. I am.

Q. 4. Are you acquainted with the land above described by personal inspection of each of its smallest legal sub-divisions?

A. I am.

Q. 5. When and in what manner was such inspection made?

A. On the 13th day of February, 1902, by going over the land.

Q. 6. Is the land occupied; or are there any improvements on it not made for ditch or canal purposes or which were not made by or do not belong to you?

A. No.

Q. 7. Is the land fit for cultivation, or would it be fit for cultivation if the timber were removed?

A. No.

Q. 8. What is the situation of this land, and what is the nature of the soil, and what causes render the land unfit for cultivation?

A. Mountainous, and the soil is rocky.

Q. 9. Are there any salines, or indications of deposits of gold, silver, cinnabar, copper, or coal on this land? If so, state what they are, and whether the springs or mineral deposits are valuable.

A. No.

Q. 10. Is the land more valuable for mineral or any other purposes than for the timber or stone thereon, or is it chiefly valuable for timber or stone?

A. Chiefly valuable for its timber.

Q. 11. From what facts do you conclude the land is chiefly valuable for timber or stone?

A. From the amount of timber that is on the land.

Ques. 13. Have you sold or transferred your claim to this land since making your sworn statement, or have you directly or indirectly made any agreement or contract, in any way or manner, with any person whomsoever, by which the title which you may acquire from the Government of the United States may inure, in whole or in part, to the benefit of any person except yourself?

A. I have not.

Ques. 14. Do you make this entry in good faith for the appropriation of the land exclusively to your own use and not for the use or benefit of any other person?

A. I do.

Ques. 15. Has any other person than yourself, or has any firm, corporation, or association any interest in the entry you are now making, or in the land, or in the timber thereon?

A. No.

Edward Jordan.

I HEREBY CERTIFY that the above-named Edward Jordan personally appeared before me; that I verily believe affiant to be the persons he represents himself to be; and that each question and answer in the foregoing testimony was read to him in my presence before he signed his name thereto, and that the same was subscribed and sworn to before me at Roseburg, Oregon,

this 7, day of May, 1902.

J. T. BRIDGES,  
Register.

NOTE: Every person swearing falsely to the above deposition is guilty of perjury and will be punished as provided by law for such offense. In addition thereto, the money that may be paid for the lands is forfeited and all conveyances of the land or of any right, title or claim thereto are absolutely null and void as against the United States.

I HEREBY CERTIFY THAT I have tested the accuracy of affiant's information and the bona fides of this entry by a close and sufficient oral cross-examination of the claimant and his witnesses, directed to ascertain whether the entry is made in good faith for the appropriation of the land to the entryman's own use and not for sale or speculation, and whether he has conveyed the land or his right thereto, or agreed to make any such conveyance, or whether he has directly or indirectly entered into any contract or agreement in any manner with any person or persons whomsoever by which the title that may be acquired by the entry shall inure in whole or in part to the benefit of any person or persons except himself and I am satisfied from such examination that the entry is made in good faith for the entryman's own exclusive use and not for sale or speculation, nor in the interest nor for the benefit of any other person or persons, firm or corporation.

J. T. BRIDGES,  
Register.

No. 9239.                      RECEIVER'S OFFICE AT Roseburg,  
Oregon.

Act June 3, 1878.

May 7th, 1902.

RECEIVED from Edward Jordan, of Coburg, Lane County, Ore., the sum of Four Hundred dollars and .....cents; being in full for the Lots 7, 8, 9, 10, quarter of Section 2, in Township No. 22 S. of Range No. 2 W. containing 160 acres and ..... hundredths, at \$2.50 per acre.

\$400.                      .....Receiver.

51c testimony fee received. Number written words, 225 rate per 100 words 22½ cents.

N. 9239.

Land Office,

May 7, 1902.

It is hereby certified that in pursuance of law, Edward Jordan residing at Coburg in Lane County, State of Oregon, on this day purchased of the Register of this Office the Lots 7, 8, 9 and 10, of Section 2, in Township 22 S. of Range 2 West, of the Wil. (Principal) Meridian, Oregon, containing 160 acres at the rate of two dollars and 50 cents per acre, amounting to Four Hundred Dollars and .....cents, for which the said Edward Jordan has made payment in full as required by law.

NOW, THEREFORE, be it known that on presentation of this certificate to the COMMISSIONER OF THE GENERAL LAND OFFICE the said Edward Jordan shall be entitled to receive a patent for the lot above described.

J. T. BRIDGES,  
Register.

No. 9239.

CASH ENTRY.

Land Office at

Roseburg, Oregon.

Sec. 2, Town. 22 S. Range 2 W.

5-3-04. No Action Required by Div. Pt. Entry IN-  
TACT Ref'd. Co.

ok.

G. & S.

Approved June 4, 1904.

By F. L. L. H.,  
Clerk.

Division C.

Patented August 3, 1904.

Recorded Vol. 134. Page 196.

Counsel for the government also offers in evidence, a set of papers covering the entry of Ethel M. LaRau, for Lots 9, 10, 15 and 16, in Section 18, Township 21, S. of Range 2, West, W. M., being a timber and stone entry patented to which is sought to be set aside by this suit, and there being no objections, the same is received, filed and marked Plaintiff's Exhibit "B," and is in words and figures as follows, to-wit:

DEPARTMENT OF THE INTERIOR,

General Land Office,

Washington, D. C.

May, 6, 1910.

I hereby certify that the annexed copies, are true and literal exemplifications of the originals in the files of this office.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and cause the seal of this office to be affixed, at the City of Washington, on the day and year above written.

[SEAL]

John O'Connell,

Acting Recorder of the General Land Office.

TIMBER AND STONE LANDS—SWORN STATE-  
MENT.

(To be made in duplicate).

Land Office at Roseburg, Oregon,

Dated February 17, 1902.

I, Ethel M. LaRaut, (unmarried) of (town or City) Saginaw, County of Lane, State of Oregon, desiring to avail myself of the provisions of the Act of Congress of June 3, 1878, entitled "An act for the sale of timber lands in the State of California, Oregon, Nevada and in Washington Territory" as extended to all the public Land States by act of August 4, 1892, for the purchase of the Lots Numbered 9, 10, 15 and 16 of Section 28, Township No. 21, S. of Range 2 West, in the district of lands subject to sale at Roseburg, Oregon do solemnly swear that I am a native born citizen of the United States of the age of 25 years, and by occupation Clerk, that I have personally examined said land, and from my personal knowledge state that said land is unfit for cultivation, and valuable chiefly for its timber; that it is uninhabited; that it contains no mining or other improvements, nor as I verily believe, any valuable deposit of gold, silver, cinnabar, copper or coal; that I have made no other application under said acts, that I do not apply to purchase the land

above described on speculation, but in good faith to appropriate it to my own exclusive use and benefit, and that I have not directly or indirectly made any agreement or contract, or in any way or manner, with any person or persons, whomsoever, by which the title I may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except myself, and that my post-office address is Saginaw, Oregon.

Ethel Maude LaRaut.

I hereby certify that the foregoing affidavit was read to affiant in my persence before he signed his name thereto, that said affiant is to me personally known (or has been satisfactorily identified before me by .....  
....., and that I verily believe him to be the person he represents himself to be; and that this affidavit was subscribed and sworn to before me this 17th day of February, 1902.

.....

Receiver.

I hereby certify that the foregoing affidavit was read to affiant in my presence before he signed his name thereto, that said affiant is to me personally known (or has been satisfactorily identified before me by .....  
....., and that I verily believe him to be the person he represnts himself to be; and that this affidavit was subscribed and sworn to before me this 17th day of February, 1902.

NOTE: Every person swearing falsely to the foregoing affidavit is guilty of perjury, and will be punished as provided by law for such offense. In addition there-

to, the money that may be paid for the land is forfeited, and all conveyance of the land or of any right, title, or claim thereto, are absolutely null and void as against the United States.

In case he party has been naturalized or has declared his intention to become a citizen, a certified copy of his certificate of naturalization or declaration of intention, as the case may be, must be furnished.

If the residence is in a city, the street and number must be given.

Ethel M. LaRaut.

STATE OF OREGON,

County of Lane,—ss.

I, C. J. Howard, being first duly sworn, say that I am the Foreman of BOHEMIA NUGGET, that said publication is a weekly newspaper, published and issued weekly and regularly at Cottage Grove, in Lane County, State of Oregon, and is of general circulation in said County and State. That the notice of which the one hereto attached is a true and correct copy, was published in said paper once a week for 9 weeks, being published 10 times; the first on the 28th day of February, 1902, and the last on the 2nd day of May, 1902. That said notice was published in the regular and entire issue of every number of said paper during said period and time of publication, and that the said notice was published in a newspaper proper and not in a supplement.

C. J. Howard.

Subscribed and sworn to before me this 2nd day of May, 1902.

M. G. Ghy,

N. P.

NOTICE FOR PUBLICATION

United States Land Office,  
Roseburg, Oregon, Feb. 17, 1902.

Notice is hereby given that in compliance with the provisions of the act of Congress of June 3, 1878, entitled "Act for the sale of timber land in the States of California, Oregon, Nevada and Washington Territory," as extended to the Public Land States by Act of August 4, 1892, Ethel M. La Raut of Saginaw, County of Lane, State of Oregon, has this day filed in this office her sworn statement No. 2046 for the purchase of Lots numbered 9, 10, 15 and 16, of Section No. 28, Township 21 South of Range 2 West, and will offer proof to show that the land sought is more valuable for its timber or stone than for agricultural purposes, and to establish his claim to said land before the Register and Receiver of this office at Roseburg, Oregon, for Thursday, the 8th day of May, 1902.

She names as witnesses:

Orin Robinson, D. N. Brumbaugh of Cottage Grove, Oregon; Harry Dunbar, of Eugene, Oregon; Lucy La-Raut of Wilbur, Oregon.

Any and all persons claiming adversely the above described lands are requested to file their claims in this office on or before said 8th day of May, 1902.

J. T. Bridges.

DEPARTMENT OF THE INTERIOR.

United States Land Office.

Roseburg, Oregon, May 8, 1902.

D. H. Brumbaugh being first duly sworn deposes and says that he is the indential person who acted as a wit-

ness in the timber cash entry of Ethel LaRaut for Lots 9, 10, 15 and 16, Sec. 28, Tp. 21 S., R. 2 West, upon which final proof was submitted this 8th day of May, 1902; that his name in the published notice was printed D. N. Brumbaugh, which is incorrect as it should have been D. H. Brumbaugh, and it is for the reason of correcting the same that this affidavit is made.

D. H. BRUMBAUGH,

Subscribed and sworn to before me this 8th day of May, 1902.

J. T. BRIDGES,  
Register.

NON-MINERAL AFFIDAVIT.  
DEPARTMENT OF THE INTERIOR.  
United States Land Office.

Roseburg, Oregon.

May 8, 1902.

Miss Ethel E. LaRaut, being duly sworn according to law, deposes and says that she is the identical person who is an applicant for Government title to the Lots No. 9, 10, 15 and 16, Sec. 28, Tp. 21, S. R. E. West, that he is well acquainted with the character of the said described land, and with each and every legal subdivision thereof, having frequently passed over the same; that his personal knowledge of said land is such as to enable him to testify understandingly with regard thereto; that there is not, to his knowledge within the limits thereof, any vein, or lode of quartz, or other rock in place, bearing gold, silver, cinnabar, lead, tin, or copper, or any deposit of coal; that there is not within the limits of said land to his knowledge any placer, cenmet, gravel, or

other valuable mineral deposit; that the land contains no salt spring or deposits of salt in any form sufficient to render it chiefly valuable therefor; that no portion of said land is claimed for mining purposes under the local customs or rules of miners or otherwise; that no portion of said land is worked for mineral during any part of the year by any person or persons; that said land is essentially non-mineral land, and that his application therefor is not made for the purpose of fraudulently obtaining title to the mineral land, but with the object of securing said land for timber purposes and that his post-office address is, Saginaw, Oregon.

MISS ETHEL M. LA RAUT.

I hereby certify that the foregoing affidavit was read to affiant in my presence before he signed his name thereto; that said affiant is to me personally known (or has satisfactorially identified before me by .....), and that I verily believe him to be a credible person and the person he represents himself to be, and that this affidavit was subscribed and sworn to before me at my office at Roseburg, Oregon, within the Roseburg, Oregon land district on the 8th day of May, 1902.

J. T. BRIDGES,  
Register.

NOTE: ' The officer before whom the deposition is taken should call the attention of the witness to the following section of the Revised Statutes, and state to him that it is the purpose of the Government, if it be ascertained that he testifies falsely to prosecute him to the full extent of the law.

REVISED STATUTES OF THE UNITED  
STATES.

## Title LXX—Crimes Chap. 4.

Sec. 5392. Every person who having taken an oath before a competent tribunal, officer, or person in any case in which a law of the United States authorizes an oath to be administered that he will testify, declare, depose or certify, truly or that any written testimony, declaration, deposition or certificate by him subscribed is true, wilfully and contrary to such oath states or subscribes any material matter which he does not believe to be true, is guilty of perjury and shall be punished by fine of not more than two thousand dollars, and by imprisonment, at hard labor, not more than five years; and shall, moreover, thereafter, be incapable of giving testimony in any court of the United States until such time as the judgment against him is reversed. (See Sec. 1750.)

TESTIMONY OF WITNESS UNDER ACTS OF  
JUNE 3, 1878, AND AUGUST  
4, 1892.

D. H. Brumbaugh, being called as a witness in support of the application of Ethel M. LaRaut, to purchase the Lots 9, 10, 15 and 16, of Section 28, Township 21 S., of Range 2 W., Testifies as follows:

Q. 1. What is your age, post-office address, and where do you reside?

A. 36 years, Cottage Grove, Oregon, and I reside there.

Q. 2. Are you acquainted with the land above described by personal inspection of each of its smallest

legal sub-divisions?

A. I am.

Q. 3. When and in what manner was such inspection made?

A. I was over the land Feb. 16, 1902.

Q. 4. Is it occupied or are there any improvements on it not made for ditch or canal purposes or which were not made by, or do not belong to the said applicant?

A. No.

Q. 5. Is it fit for cultivation?

A. No.

Q. 6. What causes render it unfit for cultivation?

A. Rocky, steep and covered with timber.

Q. 7. Are there any salines, or indications of deposits of gold, silver, cinnabar, copper, or coal on this land? If so, state what they are and whether the springs or mineral deposits are valuable.

A. Nothing that I know of.

Q. 8. Is the land more valuable for mineral or any other purposes than for the timber or stone thereon, or is it chiefly valuable for timber or stone?

A. Chiefly valuable for timber.

Q. 9. From what facts do you conclude that the land is chiefly valuable for timber or stone?

A. It is mostly all timber.

Q. 10. Do you know whether the applicant has directly or indirectly made any agreement or contract in any way or manner with any person, whomsoever, by which the title which he may acquire from the Govern-

ment of the United States may inure in whole or in part to the benefit of any person except himself?

A. She has not to my knowledge.

Q. 11. Are you in any way interested in this application or in the lands above described or the timber or stone, saline mines, or improvements of any description whatever thereon??

A. No.

D. H. BRUMBAUGH,

I hereby certify that each question and answer in the foregoing testimony was read to the witness before he signed and thereto, and that the same was subscribed and sworn before me this 8th day of May, 1902.

J. T. BRIDGES,

Register.

NOTE: The officer before whom the testimony is taken should call the attention of the witness to the following section of the Revised Statutes, and state to him that it is the purpose of the Government, if it be ascertained that he testifies falsely, to prosecute him to the full extent of the law.

Title LXX—Crimes—Chapter 4.

Sec. 5392. Every person who, having taken an oath before a competent tribunal, officer or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed is true, wilfully and contrary to such oath, states and subscribes any material matter which he does not be-

lieve to be true, is guilty of perjury, and shall be punished by a fine of not more than two thousand dollars, and by imprisonment, at hard labor, not more than five years, and shall moreover, thereafter be incapable of giving testimony in any court of the United States until such time as the judgment against him is reversed. See Sec. 1750.

The testimony of claimant and witness must be taken at the same Time and before the Register and Receiver of the land district in which the land is situated.

#### TIMBER AND STONE LANDS.

##### Testimony of Claimant.

Miss Ethel La Raut, being called as a witness in support of his application to purchase the Lots No. 9, 10, 15 and 16, of Sec. 28, Township 21, S., Range 2 west testifies as follows:

Q. 1. What is your age, post-office address, and where do you reside?

A. 25 years, I am unmarried, Saginaw, Oregon, and I reside there.

Q. 2. Are you a native born citizen of the United States, and if so, in what State or Territory were you born?

A. I am, was born in Oregon.

Q. 3. Are you the identical person who applied to purchase this land on the 17th day of February, 1902, and made the sworn statement assigned by law before the Register (or Receiver) on that day?

A. I am.

Q. 4. Are you acquainted with the land above described by personal inspection of each of its smallest le-

gal sub-divisions?

A. I am.

Q. 5. When and in what manner was such inspection made?

Ques. 6. Is the land occupied; or are there any improvements on it not made for ditch or canal purposes, or which were not made by or do not belong to you?

A. No.

Q. 7. Is the land fit for cultivation, or would it be fit for cultivation if the timber were removed?

A. No.

Q. 8. What is the situations of this land, and what is the nature of the soil, and what causes render the land unfit for cultivation?

A. It is mountainous and the soil is rock.

Q. 9. Are there any salines, or indications of deposits of gold, silver, cinnabar, copper, or coal on this land? If so, state what they are, and whether the springs or mineral deposits are valuable.

A. No.

Q. 10. Is the land more valuable for mineral or any other purposes than for the timber or stone thereon, or is it chiefly valuable for timber or stone?

A. Chiefly valuable for its timber.

Q. 11. From what facts do you conclude that the land is chiefly valuable for timber or stone?

A. The soil is rocky and it is covered with timber.

Q. 12. What is the estimated market value of the timber standing upon this land?

A. About \$800.00.

In case the party is of foreign birth, a certified transcript from the court records of his declaration of intention to become a citizen, or naturalization, or a copy thereof, cetified by the officer taking this proof must be filed with the case.

Q. 13. Have you sold or transferred your claim to this land since making your sworn statement, or have you directly or indirectly made any agreement or contract in any way, or any manner, with any person whomsoever, by which the title which you may acquire from the Government of the United States may inure in whole or in part, to the benefit of any person except yourself?

A. I have not.

Q. 14. Do you make this entry in good faith for the appropriation of the land exclusively to your own use and not for the use or benefit of any other person?

A. I do.

Q. 15. Has any other person than yourself, or has any firm, corporation, or association any interest in the entry you are now making or in the land, or in the timber thereon?

A. No.

MISS ETHEL M. LA RAUT.

I HEREBY CERTIFY that the above-named Miss Ethel M. La Raut, personally appeared before me, that I verily believe affiant to be the person he represents himself to be; and that each question and answer in the foregoing testimony was read to him in my presence before he signed his name thereto, and that the same

was subscribed and sworn to before me at Roseburg, Oregon, this 8th day of May, 1902.

J. T. BRIDGES.

NOTE: Every person swearing falsely to the above deposition is guilty of perjury and will be punished as provided by law for such offense. In addition thereto, the money that may be paid for the lands is forfeited, and all conveyances of the land or of any right, title or claim thereto are absolutely null and void as against the United States.

I HEREBY CERTIFY, that I have tested the accuracy of affiant's information and the bona fides of this entry by a clear and sufficient oral cross-examination of the claimant and his witnesses, directed to ascertain whether the entry is made in good faith for the appropriation of the land to the entryman's own use and not for sale or speculation, and whether he has conveyed the land or his right thereto, or agreed to make any such conveyances, or whether he has directly or indirectly entered into any contract or agreement in any manner with any person or persons whomsoever by which the title that may be acquired by the entry shall inure in whole or in part to the benefit of any person, or persons except himself, and am satisfied from such examination that the entry is made in good faith for entryman's own exclusive use and not for sale or speculation, nor in the interest nor for the benefit of any other person, or persons, firm or corporation.

J. T. BRIDGES,  
Register.

TIMBER LAND, ACT JUNE 3, 1878—NOTICE  
FOR PUBLICATION.

United States Land Office.

Roseburg, Oregon, Feb. 17, 1902.

Notice is hereby given that in compliance with the provisions of the Act of Congress of June 3, 1878, entitled "An Act for the sale of timber lands in the States of California, Oregon, Nevada, and Washington, Territory," as extended to all the Public Land States by act of Aug. 4, 1892, Ethel M. La Raut, of (town or city) Saginaw, County of Lane, State of Oregon, has this day filed in this office his sworn statement No. 2046 for the purchase of the Lots Numbered 9, 10, 15 and 16, of Section 28, Township 21, South of Range 2 West and will offer proof to show that the land sought is more valuable for its timber or stone than for agricultural purposes, and to establish his claim to said land before the Register and Receiver of this office at Roseburg, Oregon, on Thursday, the 8th day of May, 1902.

He names as witnesses:

Orin Robinson, Cottage Grove, Oregon.

D. H. Brumbaugh, Cottage Grove, Oregon.

Harry Dunbar, Eugene Oregon.

Lucy LaRaut, Wilbur, Oregon.

Any and all persons claiming adversely the above described lands are requested to file their claims in this office on or before said 8th day of May, 1902.

J. T. BRIDGES,  
Register.

This notice must be published once a week for ten consecutive weeks in a newspaper published nearest the land, and must also be posted in a conspicuous place in the land office for the same period.

# CERTIFICATE AS TO POSTING OF NOTICE.

United States Land Office.

Roseburg Oregon, May 8, 1902.

I, J. T. Bridges, Register of the Land Office, certify that the above notice was by me posted in a conspicuous place in my office during the period of sixty (60) days and over, I having first posted the same on the seventeenth day of February, 1902.

I further certify that there are no adverse claims to the land herein described, known to this office.

J. T. BRIDGES,  
Register.

12128-10.

No. 92444.          Receivers Office, at Roseburg, Ore.  
Act, June 3, 1878.

May 8, 1902.

Received from Ethel M. LaRaut, of Saginaw, Lane County, Ore., the sum of Four Hundred and Seven Dollars and Five Cents, being in full for the Lots 9, 10, 15 and 16, Quarter of Section No. 28, in Township No. 21 South of Range No. 2 W., containing 162 acres and 82 hundredths.

\$2.50 per acre.

J. H. BOOTH,  
Receiver.

\$407.05.

Received R. and R. fees \$10.

\$ 49c. Testimony fee received. No. of written words

220, rate per one hundred words 22½c.

1212-11.

No. 924-4. Land Office, at Roseburg, Oregon.

May 9, 1902.

It is hereby certified that in pursuance of law, Ethel M. La Raut, residing at Saginaw, in Lane County, State of Ore., on this day purchase of the Register of this office the Lots 9, 10, 15 and 16, of Section No. 28, in Township No. 21 S. of Range 2 W. of the Will. Principal Meridian, Ore., containing 162.82 acres, at the rate of Two Dollars and 50 Cents, for which the said Ethel M. LaRaut has made payment in full as required by law.

NOW, therefore, be it known, that on presentation of this certificate to the COMMISSIONER OF THE GENERAL LAND OFFICE, the said Ethel M. La-Raut shall be entitled to receive Patent for the lot above described.

J. T. BRIDGES,

Register.

12128.

Patent to contain reservation according to provise to the Act of Aug. 30, 1890.

No. 9244.

CASH ENTRY.

Land Office at

Roseburg, Oregon.

Sec. 2, Town. 21 S. Range 2 W. 5-31-04. No action required by Div. P. Entry. INTACT Ref'd. C.

G. A. P.

O. K.

( Div. C. )

( Lis. 23. )

Approved June 4, 1904. By F. L. L. H. Ex. Clerk.  
Division C.

Patented August 3, 1904.

Recorded Vol. 134, Page 200.

Counsel for the Government, also offers in evidence a similar set of papers relating to the timber and stone entry of Lucy M. LaRaut, covering Lots 1, 2, 7 and 8, Section 28, Township 21, South of Range 2 West, W. M., and there being no objections, the said is received and filed, marked Plaintiff's Exhibit, "C", which is in words and figures as follows, to-wit:

DEPARTMENT OF THE INTERIOR.

General Land Office.

Washington, D. C.

May 6, 1910.

I hereby certify that the annexed copies are true, and literal exemplifications of the originals in the files of this office.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and caused the seal of this office to be Affixed, at the City of Washington, on the day and year above written.

[Seal]

JOHN O'CONNELL,

Acting Recorder of the General Land Office.

LUCY LaRAUT.

R. X. 202.

12130-1.

State of Oregon,

Couny of Lane,—ss.

I, C. J. Howard, being first duly sworn, say that I am the Foreman of the BOHEMIA NUGGETT.

That said publication is a weekly newspaper, published and issued weekly and regularly at Cottage Grove, in Lane County, State of Oregon, and is of general circulation in said county and state. That the notice of which the one hereto attached is a true and correct copy, was published in said paper once a week for 9 weeks, being published 10 times; the first on the 28th day of February, 1902, and the last on the 2nd day of May, 1902. That said notice was published in the regular and entire issue of every number of said paper during said period and time of publication, and that the said notice was published in a newspaper proper, and not in a Supplement.

C. J. HOWARD.

Subscribed and sworn to before me this 2 day of May, 1902.

M. G. GHY,  
N. P.

#### NOTICE FOR PUBLICATION.

United States Land Office,  
Roseburg, Fed. 17, 1902.

Notice is hereby given that in compliance with the provisions of the Act of Congress of June 3, 1878, entitled "An Act for the sale of timber land in the States of California, Oregon, Nevada and Washington Territory," as extended to all the Pacific Land States by Act. of Aug. 4, 1892, Lucy La Raut, of Wilbur, County of Douglas, State of Oregon, has this day filed in this office her sworn statement, No. 2045, for the purchase of the lots numbered 1, 2, 7 and 8 of Section No. 28, Township 21 South of Range 2, West,

and will offer proof to show that the land sought is more valuable for the timber or stone than for agricultural purposes, and to establish her claim to said land before the Register and Receiver of this Office at Roseburg, Oregon, on Thursday, the eighth day of May, 1902.

She names as witnesses:

Orin Robinson, D. N. Brumbaugh, of Cottage Grove, Oregon, Harry Dunbar of Eugene, Oregon, Ethel LaRaut of Saginaw, Oregon.

And all persons claiming adversely the above described land are requested to file their claims in this office on or before said eighth day of May, 1902.

J. T. BRIDGES,

Register.

12130-2.

#### NON-MINERAL AFFIDAVIT.

This affidavit can be sworn to only on personal knowledge, and cannot be made on information and believe.

This non-mineral affidavit accompanying an entry of public land must be made by the party making the entry, and only before the officer taking the other affidavits required of the entryman.

DEPARTMENT OF THE INTERIOR.

United States Land Office.

Roseburg, Oregon.

May 8, 1902.

Miss Lucy LaRaut, being duly sworn according to law, deposes and says that he is the identical person who is an applicant for Government title to the lots

he is well acquainted with the character of said described land, and with each and every legal subdivision thereof, having frequently passed over the same; that his personal knowledge of said land is such as to him to testify understandingly with regard thereto; that there is not, to his knowledge, within the limits thereof, any vein or lode of quartz, or other rock in place, bearing gold, silver, cinnabar, lead, tin, or copper, or any deposit of coal; that there is not within the limits of said land, to his knowledge, any placer, cement, gravel, or other valuable mineral deposit; that the land contains no salt spring, or deposit of salt in any form sufficient to render it chiefly valuable therefor; that no portion of said land is claimed for mining purposes under the local customs or rules of miners, or otherwise; that no portion of said land is worked for mineral during any part of the year by any person, or persons; that said land is essentially non-mineral land, and that his application therefor is not made for the purpose of fraudulently obtaining title to the mineral land, but with the object of securing the land for timber purposes, and that his post-office address is Wilbur, Oregon.

MISS LUCY LaRAUT.

I hereby certify that the foregoing affidavit was read to affiant in my presence before he signed his name thereto; that said affiant is to me personally known (or has been satisfactorily identified before me by .....), and that I verily believe him to be a credible person and the person he represents himself to be, and that this affidavit was

subscribed and sworn to before me at my office in Roseburg, Oregon, with the Roseburg Oregon land district on this 8th day of May, 1902.

J. T. BRIDGES,  
Register.

NOTE: The officer before whom the deposition is taken should call the attention of the witness to the following section of the Revised Statutes, and state to him that it is the purpose of the Government, if it be ascertained that he testifies falsely to prosecute him to the full extent of the law.

REVISED STATUTES OF THE UNITED  
STATES, Title LXX. Crimes—Chapter 4.

Sec. 5392. Every person who having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered that he will testify, declare, depose or certify truly, or that any written testimony, declaration, deposition or certificate by him subscribed is true, willfully and contrary to such oath states or subscribed any material matter which he does not believe to be true, is guilty of perjury, and shall be punished by fine of not more than two thousand dollars and by imprisonment, at hard labor, not more than five years and shall moreover that after be incapable of giving testimony in any court of the United States until such time as the judgment against him is reversed.

12130-4.

(The testimony of two witnesses, in this form tak-

en separately required in each case.)

TESTIMONY OF WITNESS UNDER ACTS OF  
JUNE 3, 1878, AND AUGUST 4, 1892.

I, Harry Dunbar, being called as a witness in support of the application of Lucy LaRaut, to purchase the Lots, 1, 2, 7 and 8, of Section 28, Township 21 S., of Range 2 West, testifies as follows:

Q. 1. What is your age, post-office address and where do you reside?

A. Twenty-five years, Eugene, Oregon, and I reside there.

Q. 2. Are you acquainted with the land above described by personal inspection of each of its smallest legal subdivisions?

A. I am.

Ques. 3. When and in what manner was such inspection made?

Ans. I was on the land Feb. 15, 1902.

Ques. 4. Is it occupied, or are there any improvements on it, not made for ditch or canal purposes, or which were not made by, or do not belong to, the said applicant?

Ans. No.

Q. 5. Is it fit for cultivation?

Ans. No.

Ques. 6. What causes render it unfit for cultivation?

Ans. On account of the hills and rocks.

Ques. 7. Are there any salines, or indications of deposits, gold, silver, cinnabar, copper, or coal on this land? If so, state what they are, and whether the

springs or mineral deposits are valuable.

Ans. None to my knowledge.

Ques. 8. Is the land more valuable for mineral or any other purposes than for the timber or stone thereon? Or is it chiefly valuable for timber or stone?

Ans. Chiefly valuable for timber.

Ques. 9. From what fact do you conclude that the land is chiefly valuable for timber or stone?

Ans. From amount of timber on the land.

Ques. 10. Do you know whether the applicant has directly or indirectly made any agreement, or contract, in any way or manner, with any person whomsoever, by which the title which he may acquire from the Government of the United States may inure in whole or part to the benefit of any person except himself?

Ans. She has not to my knowledge.

Ques. 11. Are you in any way interestted in this application, or in the land above described, or the timber or stone, salines mines, or improvements, of any description whatever thereon?

Ans. No.

HARRY DUNBAR.

I hereby certify that each question and answer in the foregoing testimony was read to the witness before he signed his name thereto, and that the same was subscribed and sworn to before me this 8th day of May, 1902.

J. T. BRIDGES,

Register.

NOTE: The officer before whom the testimony is

taken, should call the attention of the witness to the following section of the Revised Statutes, and state to him that it is the purpose of the Government, if it be ascertained, that he testifies falsely, to prosecute him to the full extent of the law.

TITLE LXX—CRIMES, Chap. 4.

Sec. 5392. Every person who having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed is true, willfully, and contrary to such oath, states and subscribes any material matter which he does not believe to be true, is guilty of perjury, and shall be punished by a fine of not more than two thousand dollars, and by imprisonment, at hard labor, not more than five years, and shall, moreover, thereafter be incapable of giving testimony in any court of the United States until such time as the judgment against him is reversed. (See Sec. 1750.)

12130-5.

(The testimony of claimant and witness must be taken at SAME TIME, and before the REGISTER AND RECEIVER of the land district in which the land is situated.)

TIMBER AND STONE LANDS.

TESTIMONY OF CLAIMANT.

I, Miss Lucy LaRaut, being called as a witness in support of his application to purchase the lots No. 1, 2, 7, 8 of Section 28, Township 21 S., Range Two

West, testifies as follows.

Ques. 1. What is your age, post-office address, and where do you reside?

Ans. 23 years, Wilbur, Oregon, and I reside there. (I am unmarried.)

Ques. 2. Are you a native born citizen of the United States; and if so, in what state or territory were you born?\*

\*In case the party is of foreign birth, a certified transcript from the court records of declaration of intention to become a citizen, or naturalization, or a copy thereof, certified by the officer, taking this proof, must be filed with the case.

121230.

Ans. I am, was born in Oregon.

Ques. 3. Are you the identical person who applied to purchase this land on the 17 day of February, 1902, and made the sworn statements assigned by law before the Register (or Receiver) on that day?

Ans. I am.

Ques. 4. Are you acquainted with the land above described by personal inspection of each of its smallest legal subdivisions?

Ans. I am.

Ques. 5. When and in what manner were such inspections made?

Ans. On the 15th day of February, 1902, by going over the land.

Ques. 6. Is the land occupied? Or are there any improvements on it not made for ditch, or canal purposes, or which were not made by or do not belong

to you?

Ans. No.

Ques. 7. Is the land fit for cultivation, or would it be fit for cultivation if the timber were removed?

Ans. I think not.

Ques. 8. What is the situation of this land and what is the nature of the soil and what causes render the land unfit for cultivation?

Ans. It is very mountainous, and the soil is rocky.

Ques. 9. Are there any salines, or indications of deposits of gold, silver, cinnabar, copper, or coal on this land, if so, state what they are, and whether the springs or mineral deposits are valuable.

Ans. No.

Ques. 10. Is the land more valuable for mineral or any other purposes than for the timber or stone thereon, or is it chiefly valuable for timber and stone?

Ans. Chiefly valuable for its timber.

Ques. 11. From what fact do you conclude that the land is chiefly valuable for timber or stone?

Ans. From the amount of timber that is on the land.

Ques. 12. What is the estimated market value of the timber standing upon this land?

Ans. About \$800.

Ques. 13. Have you sold or transferred your claim to this land making your sworn statement, or have you directly or indirectly made any agreement or contract, in any way or manner, with any person whomsoever, by which the title which you may acquire from the Government of the United States may inure, in

whole or in part, to the benefit of any person except yourself?

Ans. I have not.

Ques. 14. Do you make this entry in good faith for the appropriation of the land exclusively to your own use and not for the use or benefit of any other person?

Ans. I do.

Ques. 15. Has any other person than yourself, or has any firm, corporation, or association any interest in the entry you are now making, or in the land, or in the timber thereon?

Ans. No.

MISS LUCY LaRAUT.

I hereby certify that the abovenamed Miss Lucy LaRaut personally appeared before me; that I verily believe affiant to be the person he represents himself to be, and that each question and answer in the foregoing testimony was read to him in my presence before he signed his name thereto, and that the same was subscribed and sworn to before me at Roseburg, Oregon, this 8 day of May, 1902.

J. T. BRIDGES,

Register.

NOTE: Every person swearing falsely to the above deposition is guilty of a perjury and will be punished as provided by law for such offense. In addition thereto the money that may be paid for the lands is forfeited, and all conveyances of the land or of any right, title, or claim thereto are absolutely null and void as against the United States.

I hereby certify that I have tested the accuracy of affiant's information and the bona fides of this entry by a close and sufficient oral cross-examination of the claimant and his witnesses, directed to ascertain whether the entry is made in good faith for the appropriation of the land to the entry-man's own use and not for sale or speculation, and whether he has conveyed the land, or his right thereto, or agreed to make any such conveyance, or whether he has directly or indirectly entered into any contract or agreement in any manner with any person or persons, whomsoever by which the title that may be acquired by the entry shall inure in whole or in part to the benefit of any person, or persons except himself, and am satisfied from such examination that the entry is made in good faith for entryman's own exclusive use and not for sale or speculation, nor in the interest nor for the benefit of any other person or persons, firm, or corporation.

J. T. BRIDGES,  
Register.

12130-7.

DEPARTMENT OF THE INTERIOR.

United States Land Office.

Roseburg, Oregon, May 8, 1902.

D. H. Brumbaugh, being first duly sworn, deposes and says that he is the identical person who acted as a witness in the timber cash entry of Lucy LaRaut for the Lots 1, 2, 7 and 8, in Sec. 28, Tp. 21, S., R. 2 West, upon which final proof was submitted this 8th day of May, 1902, and that his name in the printed

notice was printed D. N. Brumbaugh, which is incorrect as it should have been D. H. and it is for the reason of correcting the same that this affidavit is made.

D. H. BRUMBAUGH.

Subscribed and sworn to before me this 8th day of May, 1902.

J. T. BRIDGES,  
Register.

12130-8.

TIMBER LAND ACT June 3, 1878, NOTICE OF  
PUBLICATION.

United States Land Office,  
Roseburg, Oregon,  
February 17, 1902.

Notice is hereby given that in compliance with the provisions of the act of Congress of June 3, 1878, entitled "An Act for the sale of timber lands in the States of California, Oregon, Nevada, and Washington Territory" as extended to all the Public Land States by act of August 4, 1892. Lucy LaRaut, of (town or city) Wilbur, county of Douglas, (State or Territory) of Oregon, has this day filed in his office his sworn statement No. 2045, for the purchase of the Lots Numbered 1, 2, 7 and 8, of Section No. 28, Township 21, South of Range 2 West, and will offer proof to show that the land sought is more valuable for its timber or stone than for agricultural purposes, and to establish his claim to sand land, before the Register and Receiver of this office at Roseburg, Oregon, on Thursday, the 8 day of May, 1902.

He names as witnesses:

Orin Robinson, of Cottage Grove, Oregon.

D. N. Brumbaugh, of Cottage Grove, Oregon.

Harry Dunbar, Eugene, Oregon.

Ethel LaRaut, of Saginaw, Oregon.

Any and all persons claiming adversely the above-described lands are requested to file their claims in this office on or before the 8th day of May, 1902.

J. T. BRIDGES,  
Register.

This notice must be published once a week for ten consecutive weeks in a newspaper published nearest the land, and must also be posted in a conspicuous place in the land office for the same period.

CERTIFICATE AS TO POSTING OF NOTICE.

United States Land Office.

Roseburg, Oregon, May 8, 1902.

I, J. T. Bridges, Register of the land office, certify that the above notice was by me posted in a conspicuous place in my office during the period of sixty (60) days and over, I having first posted the same on the 17th day of February, 1902.

I further certify that there are no adverse claims to the land herein described known to this office.

J. T. BRIDGES,  
Receiver.

12130-9.

This affidavit can be made only upon the personal knowledge of applicant derived from his own personal examination of the land.

TIMBER AND STONE LANDS SWORN  
STATEMENT.

To be made in Duplicate.

Land Office at Roseburg, Oregon.

Date, February 17, 1902.

I, Lucy LaRaut (unmarried) of Wilbur, County of Douglas, State of Oregon, desiring to avail myself of the provisions of the act of Congress of June 3, 1878, entitled "An act for the sale of timber lands in the States of California, Oregon, Nevada, and in Washington Territory," as extended to all the Public Land States by act of August 4, 1892, for the purchase of the Lots Numbered 1, 2, 7 and 8, of Section 28, Township 21, South of Range 2 West, in the district of lands subject to sale at Roseburg, Oregon, do solemnly swear that I am a native born citizen of the United States of the age of 23 years, by occupation Housekeeper, that I have personally examined said land, and from my personal knowledge state that said land is unfit for cultivation, and valuable chiefly for its timber; that it is uninhabited; that it contains no mining or other improvements, nor as I verily believe, any valuable deposit of gold, silver, cinnabar, copper, or coal; that I have made no other application under said acts, that I do not apply to purchase the land above described on speculation, but in good faith to appropriate it to my own exclusive use and benefit, and that I have not directly, or indirectly, made any agreement or contract, or in any way or manner, with any person, or persons, whomsoever, by which the title I may acquire from the Government of the Unit-

ed States may inure in whole or in part to the benefit of any person except myself, and that my post-office address is Wilbur, Ore.

LUCY LaRAUT,  
Wilbur, Oregon.  
Douglas Co.

I hereby certify that the foregoing affidavit was read to affiant in my presence before he signed his name thereto, that said affiant is to me personally known (or has been satisfactorily identified before me by ..... ) and that I verily believe him to be the person he represents himself to be, and that this affidavit was subscribed and sworn to before me this 17th day of February, 1902.

J. H. BOOTH,  
Receiver.

NOTE: Every person swearing falsely to the foregoing affidavit is guilty of perjury, and will be punished as provided by law for such offense, in addition thereto, the money that may be paid for the land is forfeited and all conveyances of the land or of any right, title, or claim thereto, are absolutely null and void as against the United States.

In case the party has been naturalized or has declared his intention to become a citizen, a certified copy of his certificate of naturalization or declaration of intention, as the case may be, must be furnished.

If the residence is in a city, the street and number must be given.

12130-10.

No. 92216.

RECEIVER'S OFFICE at Roseburg, Oregon.

May 8, 1902.

Act June 3, 1878.

RECEIVED FROM Lucy LaRaut, of Wilbur, Douglas County, Oregon, the sum of Four Hundred and 7 dollars and five cents; being in full for the Lots 1, 2, 7 and 8, quarter of Section 28, in Township No. 21 South, of Range No. 2 West, containing 162 acres and 92 hundredths, at \$2.50 per acre.

J. H. BOOTH,

Receiver.

\$407.05.

Received R. &amp; R. fee \$10.00.

\$ .49c testimony fee received. Number of written words 220, rate per 100 words 22½ cents.

12130-11

LAND OFFICE at Roseburg, Oregon.

May 8, 1902.

No. 9246.

I hereby certify that in pursuance of law, Lucy La Raut, residing at Wilbur, in Douglas County, State of Oregon, on this day purchased of the Register of this Office the Lots 1, 2, 7 and 8, of Section 28, in Township No. 21 S. of Range No. 2 W., of the Willamette Principal Meridian, Ore., containing 162.82 acres at the rate of Two Dollars and 50 cents per acre, amounting to Four Hundred and 7 dollars, and five cents, for which the said Lucy La Raut, has made payment in full as required by law.

NOW, THEREFORE, be it known that on presentation of this certificate to the COMMISSIONER OF THE GENERAL LAND OFFICE, the said Lucy La Raut, shall be entitled to receive a Patent for the lot above described.

J. T. BRIDGES,  
Register.

12130-12.

No. 9246.

CASH ENTRY.

Land Office at

Roseburg, Oregon.

Sec. 28. Town, 21 S. Range 2 W.

5-31- No. Action Required by

Div. P. Entry. INTACT Ref'd C.

G. & P.

O. K.

Approved June 4, 1904,

by FLLH. Ex. Clerk.

Division C.

Patented August 3, 1904.

Recorded Vol. 134, Page 202.

Counsel for the government offers in evidence a similar set of papers for the same purpose, covering the timber and stone entry of Stephen A. La Raut, and embracing the Northeast quarter of Section 26, Township 21 South of Range three West, of Willamette Meridian, and there being no objection, the same is received and filed, marked plaintiff's "Exhibit "D," and is in words and figures as follows, to-wit:

## DEPARTMENT OF THE INTERIOR.

General Land Office.

Washington, D. C.

May 6, 1910.

I hereby certify that the annexed copies are true, and literal exemplifications of the originals in the files of this office.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and caused the seal of this office to be affixed at the city of Washington, on the day and year above written.

[Seal.]

JOHN O'CONNELL,

Acting Recorder of the General Land Office

12126-1.

TIMBER LAND, ACT JUNE 3, 1878, NOTICE  
FOR PUBLICATION.

United States Land Office,

Roseburg, Oregon, February 7, 1902.

Notice is hereby given that incompliance with the provisions of the act of Congress of June 3, 1878, entitled "An act for the sale of timber lands in the States of California, Oregon, Nevada, and Washington Territory," as extended to all the Public Land States by act of August 4, 1892, Stephen A. La Raut, of Saginaw, County of Lane, State of Oregon, has this day filed in this office his sworn statement No. 2026, for the purchase of the N E  $\frac{1}{4}$  of Section No. 26, Township 21 S. South of Range 3 W., and will offer proof to show that the land sought is more valuable for its timber or stone than for agricultural purposes, and to establish his claim to said land before the Reg-

ister and Receiver of this office at Roseburg, Oregon, on Wednesday, the 7th day of May, 1902.

He names as witnesses:

Mrs. Alice La Raut, of Saginaw, Oregon.

George Riggs, of Mabel, Oregon.

James Lee, of Cottage Grove, Oregon.

Daniel H. Brumbaugh, of Cottage Grove Oregon.

Any and all persons claiming adversely the above-described lands are requested to file their claims in this office on or before said 7th day of May, 1902.

J. T. BRIDGES,  
Register.

This notice must be published once a week for ten consecutive weeks in a newspaper published nearest the land, and must be also posted in a conspicuous place in the land office for the same period.

#### CERTIFICATE AS TO POSTING OF NOTICE.

United States Land Office,  
Roseburg, Oregon, May 7, 1902.

I, J. T. Bridges, Register of the Land Office, certify that the above notice was by me posted in a conspicuous place in my office during the period of sixty (60) days and over, I having first posted the same on the 7th day of Feb. 1902.

I further certify that there are no adverse claims to the land herein described known to this office.

J. T. BRIDGES,  
Register.

STEPHEN A. LA RAUT.

## STATE OF OREGON,

County of Lane—ss.

I, C. J. Howard, being first duly sworn, say that I am the Foreman of BOHEMIA NUGGET. That said publication is a weekly newspaper published and issued weekly and regularly at Cottage Grove, in Lane County, State of Oregon, and is of general circulation in said county and State. That the notice of which the one hereto attached is a true and correct copy, was published in said paper once a week for 9 weeks, being published 10 times the first on the 28th day of February, 1902, and the last on the 2nd day of May, 1902. That said notice was published in the regular and entire issue of every number of said paper, during said period and time of publication, and that the said notice was published in a newspaper proper and not in a Supplement.

C. J. HOWARD,

Subscribed and sworn to before me this 2 day of May, 1902.

M. G. GHY,

N. P.

## NOTICE OF PUBLICATION.

UNITED STATES LAND OFFICE,

Roseburg, Oregon, Feb. 7, 1902.

Notice is hereby given that in compliance with the provisions of the Act of Congress of June 3, 1878, entitled "An act for the sale of timber lands in the States of California, Oregon, Nevada and Washington Territory, "as extended to all the Public Land States by act of August 4, 1892, Stephen A. La Raut,

of Saginaw, County of Lane, State of Oregon, has this day filed in this office his sworn statement No. 2026 for the purchase of the NE¼ of Section No. 26, Township 21 South of Range 3 West, and will offer proof to show that the land sought is more valuable for its timber or stone than for agricultural purposes, and to establish his claim to said land before the Register and Receiver of this office at Roseburg, Oregon, on Wednesday, the 7th day of May, 1902.

He names as witnesses:

Mrs. Alice La Raut, of Saginaw, Oregon.

George Riggs, of Mable, Oregon.

James Lee, Daniel H. Brumbaugh, of Cottage Grove, Oregon.

Any and all persons claiming adversely the above described lands are requested to file their claims in this office on or before the said 7th day of May, 1902.

.... J. T. BRIDGES,  
Register.

(Testimony of two witnesses, in this form taken separately required in each case.

TESTIMONY OF WITNESS UNDER ACTS of  
JUNE 3, 1878, and AUGUST 4, 1892.

Mrs. Alice La Raut, being called as a witness in support of the application of Stephen A. La Raut, to purchase the NE¼ of Section 26, Township 21, South of Range, 3 West, testifies as follows:

Question 1. What is your age, post-office address, and where do you reside?

Answer. 40 years, Saginaw, Oregon, and I reside there.

Ques. 2. Are you acquainted with land above described by personal inspection of each of its smallest legal subdivisions?

Ans. I am.

Ques. 3. When and in what manner was such inspection made?

Ans. I was over the land Feb. 4, 1902.

Ques. 4. Is it occupied, or are there any improvements on it not made for ditch or canal purposes or which were not made by, or do not belong to the said applicant?

Ans. No.

Ques. 5. Is it fit for cultivation?

Ans. No.

Ques. 6. What causes render it unfit for cultivation?

Ans. It is steep, rocky, has deep canyons, and covered with timber.

Ques. 7. Are there any salines, or indications of deposit of gold, silver, cinnabar, copper, or coal on this land? If so, state what they are, and whether the springs or mineral deposits are valuable.

Ans. None that I know of.

Ques. 8. Is the land more valuable for mineral or any other purposes than for the timber or stone thereon, or is it chiefly valuable for timber or stone?

Ans. Chiefly valuable for timber.

Ques. 9. From what facts do you conclude that the land is chiefly valuable for timber or stone?

Ans. It is steep and rocky and nothing else of value on it.

Ques. 10. Do you know whether the applicant has directly, or indirectly made any agreement or contract, in any way or manner with any person whomsoever, by which the title which he may acquire from the government of the United States may inure in whole or in part to the benefit of any person except himself?

Ans. He has not to my knowledge.

Ques. 11. Are you in any way interested in this application, or in the lands above described, or the timber or stone, salines, mines, or improvements of any description whatever thereon?

Ans. No.

MRS. ALICE LA RAUT.

I hereby certify that each question and answer in the foregoing testimony was read to the witness before she signed her name thereto, and that the same was subscribed and sworn to before me this 7th, May, 1902.

J. T. BRIDGES,

Register.

NOTE. The officer before whom the testimony is taken should call the attention of the witness to the following section of the Revised Statutes, and state to him that it is the purpose of the Government, if it be ascertained that he testifies falsely, to prosecute him to the full extent of the law.

TITLE LXX CRIMES—Chapter 4.

Sec. 5392. EVERY person who, having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States au-

thorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition or certificate by him subscribed is true, wilfully and contrary to such oath, states and subscribes any material matter which he does not believe to be true, is guilty of perjury, and shall be punished by a fine of not more than two thousand dollars, and by imprisonment, at hard labor, not more than five years, and shall, moreover, thereafter be incapable of giving testimony in any court of the United States until such time as the judgment against him is reversed. (See Sec. 1750.)

Testimony of claimant and witnesses must be taken at the Same Time, and before the REGISTER AND RECEIVER, of the land district which the land is situated.

#### TIMBER AND STONE LANDS.

Stephen A. La Raut, being called as a witness in support of his application to purchase the NE $\frac{1}{4}$  of Section 26, Township 21, S. Range 3 West, testifies as follows:

Question 1. What is your age, post-office address, and where do you reside?

Ans. 40 years, Saginaw, Oregon, and I reside there.

Ques. 2. Are you a native born citizen of the United States; and if so, in what state or territory were you born?

Ans. I am, was born in Oregon.

Ques. 3. Are you the identical person who applied to purchase this land on the 7, day of February, 1902?

and made the sworn statement by law before the Register?

Ans. I am.

Ques. 4. Are you acquainted with the land above described by personal inspection of each of its smallest legal sub-divisions?

Ans. I am.

Ques. 5. When and in what manner was such inspection made?

Ans. On the 4th day of Feb. 1902 by going over the land.

Ques. 6. Is the land occupied; or are there any improvements on it not made for ditch or canal purposes, or which were not made by or do not belong to you?

Ans. No.

Ques. 7. Is the land fit for cultivation, or would it be fit for cultivation if the timber were removed?

Ans. No.

Ques. 8. What is the situation of this land, and what is the nature of the soil, and what causes render the land unfit for cultivation?

Ans. It is mountainous and the soil is rocky.

Ques. 9. Are there any salines, or indications of deposits of gold, silver, cinnabar, copper, or coal on this land? If so, state what they are, and whether the springs or mineral deposits are valuable.

Ans. No.

Ques. 10. Is the land more valuable for mineral or any other purposes than for the timber or stone thereon, or is it chiefly valuable for timber or stone?

Ans. Chiefly valuable for its timber.

Ques. 11. From what facts do you conclude that the land is chiefly valuable for timber or stone?

Ans. From the amount of timber that is on the land.

Ques. 12. What is the estimated market value of the timber standing upon this land?

Ans. I do not know at this time.

In case the party is of foreign birth, a certified transcript from the court records of his declaration of intention to become a citizen, or naturalization, or a copy of certified by the officer taking his proof, must be filed with the case.

Ques. 13. Have you sold, or transferred your claim to this land since making your sworn statement, or have you directly, or indirectly made any agreement or contract in any way or manner, with any person whomsoever by which the title which you may acquire from the Government of the United States may inure in whole or in part, to the benefit of any person except yourself?

Ans. I have not.

Ques. 14. Do you make this entry in good faith for the appropriation of the land exclusively to your own use and not for the use or benefit of any other person?

Ans. I do.

Ques. 15. Has any other person than yourself, or has any firm, corporation, or association any interest in the entry you are now making, or in the land, or in the timber thereon?

Ans. No.

STEPHEN A. LA RAUT.

I hereby certify that the above-named Stephen A. La Raut, personally appeared before me; that I verily believe affiant to be the person he represents himself to be; and that each question and answer in the foregoing testimony was read to him in my presence before he signed his name thereto, and that the same was subscribed and sworn to before me at Roseburg, Oregon, this 7, day of May, 1902.

J. T. BRIDGES,  
Register.

NOTE. Every person swearing falsely to the above deposition is guilty of perjury and will be punished as provided by law for such offense. In addition thereto, the money that may be paid for the lands is forfeited, and all conveyances of the land or of any right, title or interest thereto are absolutely null and void as against the United States.

I hereby certify that I have tested the accuracy of affiant's information and the bona fides of this entry by a close and sufficient oral cross-examination of the claimant and his witnesses, directed to ascertain whether the entry is made in good faith for the appropriation of the lands to the entryman's own use and not for sale or speculation, and whether he has the land or his right thereto, or agreed to make any such conveyance of whether he has directly, or indirectly entered into any contract or agreement in any manner with any person, or persons whomsoever by which the title that may be acquired by the entry shall inure in whole or in part to the benefit of any person, or persons except himself, and am satisfied from such

examination that the entry is made in good faith, for entryman's own exclusive use and not for sale or speculation, nor in the interest nor for the benefit of any other person or persons, firm or corporation.

J. T. BRIDGES,

Register.

### NON-MINERAL AFFIDAVIT.

This affidavit can be sworn to only on personal knowledge, and cannot be made on information and belief.

The non-mineral affidavit accompany an entry of public land must be made by the party making the entry, and only before the officer taking the other affidavits required of the entryman.

### DEPARTMENT OF THE INTERIOR.

United States Land Office.

Roseburg, Oregon, May 7, 1902.

Stephen A. La Raut, being duly sworn according to law, deposes and says that he is the identical person who is an applicant for government title to the NE $\frac{1}{4}$  of Sec. 26, Tp. 21, S. R. 3 West, that he is well acquainted with the character of the described land, and with each and every legal subdivision thereof, having frequently passed over the same; that his personal knowledge of said land is such as to enable him to testify understandingly with regard thereto; that there is not to his knowledge, within the limits thereof, any vein or lode of quartz, or other rock in place, bearing gold, silver, cinnabar, lead, tin, or copper, or any deposit of coal; that there is not within the limits of said land, to his knowledge, any placer, cement,

gravel, or other valuable mineral deposit; that the land contains no salt spring, or deposits of salt in any form, sufficient to render it chiefly valuable therefor; that no portion of said land is claimed for mining purposes under the local customs, or rules of miners, or otherwise; that no portion of said land is worked for mineral during any part of the year, by any person, or persons; that said land is essentially non-mineral land, and that his application therefor is not made for the purpose of fraudulently claiming title to the mineral land, but with the object of securing said land for agricultural purposes, and that his post-office address is Saginaw, Oregon.

STEPHEN A. LA RAUT.

I hereby certify that the foregoing affidavit was read to affiant in my presence before he signed his name thereto; that said affiant is to me personally known (or has been satisfactorily identified before me by.....and that I verily believe him to be a credible person, and the person he represents himself to be, and that this affidavit was subscribed and sworn to before me at my office in Roseburg, Oregon, within the Roseburg, Oregon land district, on the 7, day of May, 1902.

J. T. BRIDGES,

Register.

NOTE. The officer before whom the deposition is taken should call the attention of the witness to the following section of the Revised Statutes, and state to him that it is the purpose of the Government of the United States, if it be ascertained that he testifies

falsely, to prosecute him to the full extent of the law.

REVISED STATUTES OF THE UNITED  
STATES.

Title LXX—Crimes, Chap. 4.

Sec. 5392. Every person who having taken an oath before a competent tribunal, officer, or person in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition or certificate by him subscribed is true, wilfully and contrary to such oath states or subscribes any material matter which he does not believe to be true, is guilty of perjury, and shall be punished by fine of not more than two thousand dollars, and by imprisonment at hard labor, not more than five years, and shall moreover, thereafter be incapable of giving testimony in any court of the United States until such time as the judgment against him is reversed. (See Sec. 1750.)

12126-7.

(The testimony of two witnesses, in this form, taken separately required in each case.)

TESTIMONY OF WITNESS UNDER ACTS OF  
JUNE 3, 1878, and AUGUST, 4, 1892.

Daniel H. Brumbaugh, being called as a witness in support of the application of Stephen A. La Raut, to purchase the NE $\frac{1}{4}$  of section 26, township 21, S. of Range 3 West, testifies as follows:

Question 1. What is your age, post-office address, and where do you reside?

Answer. 36 years, Cottage Grove, Oregon, and I

reside there.

Ques. 2. Are you acquainted with the land above described, by personal inspection of each of its smallest legal sub-division?

Ans. I am.

Ques. 3. When and in what manner was such inspection made?

Ans. I was over the land about Feb. 4, 1902.

Ques. 4. Is it occupied, or are there any improvements on it not made for ditch or canal purposes or which were not made by, or do not belong to the said applicant?

Ans. No.

Ques. 5. Is it fit for cultivation?

Ans. No.

Ques. 6. What causes render it unfit for cultivation?

Ans. It is steep, rocky and covered with timber.

Ques. 7. Are there any salines, or indications of deposits of gold, silver, cinnabar, copper, or coal on this land? If so, state what they are, and whether the springs, or mineral deposits are valuable.

Ans. Nothing that I know of.

Ques. 8. Is the land more valuable for mineral or any other purposes than for the timber or stone thereon, or is it chiefly valuable for timber or stone?

Ans. Chiefly valuable for timber.

Ques. 9. From what facts do you conclude that the land is chiefly valuable for timber or stone?

Ans. It is mostly all timber.

Ques. 10. Do you know whether the applicant has

directly, or indirectly made any agreement or contract in any way or manner, with any person, whomsoever, by which the title which he may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except himself?

Ans. He has not to my knowledge.

Ques. 11. Are you in any way interested in this application, or in the lands above described, or the timber, or stone, salines, mines, or improvements of any description whatever thereon?

Ans. No.

DANIEL H. BRUMBAUGH.

I hereby certify that each question and answer in the foregoing testimony was read to the witness before he signed his name thereto, and that the same was subscribed and sworn to before me this 7th day of May, 1902.

J. T. BRIDGES,  
Register.

NOTE. The officer before whom the testimony is taken should call the attention of the witness to the following section of the Revised Statutes, and state to him that it is the purpose of the Government, if it be ascertained that he testifies falsely, to prosecute him to the full extent of the law.

TITLE LXX—CRIMES, Chapter 4.

Sec. 5392. Every person who, having taken an oath before a competent tribunal, officer, or person in any case in which a law of the United States authorizes an oath to be administered that he will testify,

declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed is true, wilfully, and contrary to such oath states and subscribes any material matter which he does not believe to be true, is guilty of perjury, and shall be punished by a fine of not more than two thousand dollars, and by imprisonment, at hard labor, not more than five years, and shall, moreover, thereafter be incapable of giving testimony in any court of the United States, until such time as the judgment against him is reversed. (See Sec. 1750.)

This affidavit can be made only upon the personal knowledge of applicant derived from his own personal examination of the land.

TIMBER AND STONE LANDS SWORN STATEMENT.

(To be made in duplicate.)

Land Office at Roseburg, Oregon.

Date, February 7, 1902.

I, Stephen A. La Raut, of Saginaw, county of Lane, State of Oregon, desiring to avail myself of the provisions of the Act of Congress of June 3, 1878, entitled "An Act for the sale of timber lands in the States of California, Oregon, Nevada, and in Washington Territory," as extended to all the public Land States by act of August 4, 1892, for the purchase of the NE $\frac{1}{4}$  of Section 26, Township No. 21, S. South of Range 3 W., in the district of lands subject to sale at Roseburg, Oregon, do solemnly swear that I am a native born or have declared my intention to become a citizen) of the United States of the age of 40

years and by occupation Lumberman, that I have personally examined said land, and from my personal knowledge state that said land is unfit for cultivation, and valuable chiefly for its timber; that it is uninhabited; that it contains no mining or other improvements, nor as I verily believe, any valuable deposit of gold, silver, cinnabar, copper or coal; that I have made no other application under said acts that I do not apply to purchase the land above described on speculation, but in good faith to appropriate it to my own exclusive use and benefit, and that I have not directly, or indirectly, made any agreement, or contract, or in any way or manner, with any person, or persons whomsoever, by which the title I may acquire from the Government of the United States may inure in whole or in part to the benefit of any person, except myself, and that my post-office address is Saginaw, Oregon.

STEPHEN A. LA RAUT.

I hereby certify that the foregoing affidavit was read to affiant in my presence before he signed his name thereto; that said affiant is to me personally known, and that I verily believe him to be the person he represents himself to be; that this affidavit was subscribed and sworn to before me this 7th day of February, 1902.

J. H. BOOTH,

Receiver.

12126-9.

No. 9241.

RECEIVER'S OFFICE at Roseburg, Oregon.

May 7, 1902.

RECEIVED from Stephen A. La Raut, of Saginaw, Lane County, Oregon, the sum of Four Hundred Dollars and ..... cents being in full for the NE $\frac{1}{4}$  quarter of Section No. 26, in Township No. 21, S. of Range No. 3 West, containing 160 acres and..... hundredths at \$2.50 per acre.

J. H. BOOTH,  
Receiver.

\$400.00.

Received R. & R. fees \$10.00; \$.48c testimony fee received. Number of written words 215, rate per 100 words, 22 $\frac{1}{2}$  cents.

No. 9241.

LAND OFFICE at Roseburg, Ore.

May 7, 1902.

It is hereby certified that in pursuance of law, Stephen A. La Raut, residing at Saginaw, in Lane County, State of Oregon, on this day purchased of the Register of this office the NE $\frac{1}{4}$  quarter of Section No. 26, Township No. 21, S. of Range No. 3 West, of the Willamette Principal Meridian, Oregon, containing 160 acres, at the rate of two dollars and 50 cents per acre, amounting to Four Hundred Dollars and ..... cents, for which the said Stephen A. La Raut has made payment in full as required by law.

NOW, THEREFORE, Be it Known, that on presentation of this certificate to the COMMISSIONER OF THE GENERAL LAND OFFICE, the said Stephen A. La Raut, shall be entitled to receive a Pat-

ent for the lot above described.

J. T. BRIDGES,  
Register.

No. 9241.

CASH ENTRY.

Land Office at Roseburg, Oregon.

Sec. 26, Town 21, S. Range 3 West.

5-31-04. No Action Required by Div. P.

Entry INTACT Ref'd C.

G. & P.

O. K.

Approved June 4, 1904.

by FLLH. Ex-Clerk.

Recorded Vol. 134, Page 198.

6-9.

Counsel for the government offers in evidence a similar set of papers, or rather certified copies thereof, covering the entry of Alice La Raut, for the SE¼ of Section 26, Township 21, South of Range 3 West, Willamette Meridian, and there being no objection, the same is received and filed, and marked Plaintiff "Exhibit 'E' ", which is in words and figures as follows to-wit:

"DEPARTMENT OF THE INTERIOR.

General Land Office.

Washington, D. C.

May 6, 1910.

I hereby certify that the annexed copies are true, and literal exemplifications of the originals in the files of this office.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and caused the seal of this office to be affixed, at the City of Washington, on the day and year above written.

[Seal.]

JOHN O'CONNELL,

Acting Recorder of the General Land Office.

(The testimony of two witnesses, in this form, taken separately required in each case.)

TESTIMONY OF WITNESS UNDER ACTS OF  
JUNE 3, 1878, and AUGUST 4, 1892.

Daniel H. Brumbaugh, being called as a witness in support of the application of Mrs. Alice La Raut, to purchase the SE $\frac{1}{4}$  of Section 26, Township 21, S. of Range 3 W., testifies as follows:

Question 1. What is your age, post-office address and where do you reside?

Answer. 36 years, Cottage Grove, Oregon, and I reside there.

Ques. 2. Are you acquainted with the land above described by personal inspection of each of its smallest legal sub-divisions?

Ans. I am.

Ques. 3. When and in what manner was such inspection made?

Ans. I was on the land either the 4th or 5th of Feb. 1902.

Ques. 4. Is it occupied, or are there any improvements on it not made for ditch or canal purposes, or which were not made by, or do not belong to, the said applicant?

Ans. No.

Ques. 5. Is it fit for cultivation?

Ans. No.

Ques. 6. What causes render it unfit for cultivation?

Ans. It is mountain land and mostly covered with timber.

Ques. 7. Are there any salines, or indications of deposits of gold, silver, cinnabar, copper, or coal on this land? If so, state what they are, and whether the springs or mineral deposits are valuable.

Ans. Not that I know of.

Ques. 8. Is the land more valuable for mineral or any other purposes than for the timber or stone thereon, or is it chiefly valuable for timber or stone?

Ans. Chiefly valuable for timber.

Ques. 9. From what facts do you conclude that the land is chiefly valuable for timber or stone?

Ans. It is mostly all timber.

Ques. 10. Do you know whether the applicant has directly, or indirectly made any agreement or contract, in any way or manner, with any person whomsoever, by which the title which he may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except himself?

Ans. She has not to my knowledge.

Ques. 11. Are you in any way interested in this application, or in the lands above described, or the timber or stone, salines, mines, or improvements of any description whatever thereon?

Ans. No.

DANIEL H. BRUMBAUGH,

I hereby certify that each question and answer in the foregoing testimony was read to the witness before he signed his name thereto, and that the same was subscribed and sworn to before me this 7th day of May, 1902.

J. T. BRIDGES,  
Register.

NOTE. The officer before whom the testimony is taken should call the attention of the witness to the following section of the Revised Statutes, and state to him that is the purpose of the Government, if it be ascertained that he testifies falsely, to prosecute him to the full extent of the law.

TITLE LXX—CRIMES, Chapter 4.

Sec. 5392. Every person who having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly or that any written testimony declaration, deposition, or certificate by him subscribed is true, wilfully, and contrary to such oath, states and subscribes any material matter which he does not believe to be true, is guilty of perjury, and shall be punished by a fine of not more than two thousand dollars, and by imprisonment at hard labor, not more than five years and shall, moreover, thereafter be incapable of giving testimony in any court of the United States until such time as the judgment against him is reversed. (See Sec. 1750.)

This affidavit can be made only upon the personal knowledge of applicant derived from his own personal examination of the land.

TIMBER AND STONE LANDS SWORN STATE-  
MENT.

(To be made in duplicate)

Land Office at Roseburg, Oregon.

Date, February 7, 1902.

I, Alice La Raut, of Saginaw, County of Lane, State of Oregon, desiring to avail myself of the provisions of the Act of Congress of June 3, 1878, entitled "An Act for the sale of timber lands in the States of California, Oregon, Nevada, and in Washington Territory," as extended to all the Public Land States by act of August 4, 1892, for the purchase of the SE $\frac{1}{4}$  of Section 26, Township No. 21, S. of Range 3 West, in the district of lands subject to sale at Roseburg, Oregon, do solemnly swear that I am a native born, or naturalized citizen of the United States, of the age of 39 years and by occupation House-wife. That I have personally examined said land, and from my personal knowledge state that said land is unfit for cultivation, and valuable chiefly for its timber; that it is uninhabited; that it contains no mining or other improvements, nor as I verily believe, any valuable deposit of gold, silver, cinnabar, copper or coal; that I have made no other application under said acts that I do not apply to purchase the land above described on speculation, but in good faith to appropriate it to my own exclusive use and benefit, and that I have not directly, or indirectly, made any agreement from the Government of the United States which may inure in whole or in part to the benefit of any person except myself, and that my post-office address is Saginaw, Oregon.

MRS. ALICE LA RAUT,

I hereby certify that the foregoing affidavit was read to affiant in my presence before he signed his name thereto; that said affiant is to me personally known, (or has been satisfactorily identified before me by ..... and that I verily believe him to be the person he represents himself to be; and that this affidavit was subscribed and sworn to before me this 7th day of February, 1902.

J. H. BOOTH,  
Receiver.

ALICE LA RAUT.

STATE OF OREGON,

County of Lane—ss.

I, C. J. Howard, being first duly sworn, say that I am the foreman of BOHEMIA NUGGET. That said publication is a weekly newspaper, published and issued weekly and regularly at Cottage Grove, in Lane County, State of Oregon, and is of general circulation in said county and state. That the notice of which the one hereto attached is a true and correct copy, was published in said paper once a week for 9 weeks being published 10 times, the first on the 28th day of February, 1902, and the last on the 2d day of May, 1902. That said notice was published in the regular and entire issue of every number of said paper during said period, and time of publication, and that the said notice was published in a newspaper proper and not in a Supplement.

C. J. HOWARD,

Subscribed and sworn to before me this 2 day of May, 1902.

M. G. GHY,  
N. P.

## NOTICE FOR PUBLICATION.

United States Land Office.

Roseburg, Oregon, Feb. 7, 1902.

Notice is hereby given that in compliance with the provisions of the Act of Congress of June 3, 1878, entitled "An Act for the sale of timber lands in the States of California, Oregon, Nevada, and Washington Territory," as extended to all the Public Land States by act of August 4, 1892, Mrs. Alice La Raut, of Saginaw, County of Lane, State of Oregon, has this day filed in this office her sworn statement No. 2027, for the purchase of the SE $\frac{1}{4}$  of Section No. 26, Township 21, South of Range 3 W., and will offer proof to show that the land sought is more valuable for its timber or stone than for agricultural purposes, and to establish her claim to said land before the Register and Receiver of this office at Roseburg, Oregon, on Wednesday, the 7th day of May, 1902.

She names as witnesses:

Stephen A. La Raut, of Saginaw, Oregon.

George Riggs, of Mabel, Oregon.

James Lee, Daniel H. Brumbaugh, of Cottage Grove, Oregon.

Any and all persons claiming adversely the above-described lands are requested to file their claims in this office on or before said 7th day of May, 1902.

J. T. BRIDGES,

Register.

## NON-MINERAL AFFIDAVIT.

(This affidavit can be sworn to only on personal

knowledge, and cannot be made on information and belief.

The Non-Mineral Affidavit accompany an entry of public land must be made by the party making the entry, and only before the officer taking the other affidavits required of the entryman.)

## DEPARTMENT OF THE INTERIOR

### United States Land Office.

Roseburg, Oregon, May 7, 1902.

Mrs. Alice La Raut, being duly sworn, according to law, deposes and says; that he is the identical person, who is an applicant for Government title to the SE¼ Sec. 26, Tp. 21, S. R. 3 West; that he is well acquainted with the character of said described land, and with each and every legal sub-division thereof, having frequently passed over the same; that his personal knowledge of said land is such as to enable him to testify understandingly with regard thereto; that there is not to his knowledge, within the limits thereof, any vein or lode of quarz, or other rock in place, bearing gold, silver, cinnabar, lead, tin, or copper, or any deposit of coal; that there is not, to his knowledge, within the limits thereof, any vein or lode, of quartz or other rock in place, bearing gold, silver, cinnabar, lead, tin, or copper, or any deposit of coal; that there is not within the limits of said land, to his knowledge, any placer, cement, gravel, or other valuable mineral deposit; that the land contains no salt spring, or deposit of salt in any form sufficient to render it chiefly valuable therefor; that no portion of said land is claimed for mining purposes under the lo-

cal customs, or rules of minors or otherwise; that no portion or said land is worked for mineral during any part of the year, by any person, or persons; that said land is essentially non-mineral land, and that his application therefor is not made for the purpose of fraudulently obtaining title to the mineral land, but with the object of securing said land for agricultural purposes, and that his post-office address is Saginaw, Oregon.

MRS. ALICE LA RAUT,

I hereby certify that the foregoing affidavit was read to affiant in my presence before he signed his name thereto; that said affiant is to me personally known (or has been satisfactorily identified before me by.....) and that I verily believed him to be a credible person, and the person he represents himself to be, and that this affidavit was subscribed and sworn to before me at my office in Roseburg, Oregon, within the Roseburg, Oregon land district, on this 7 day of May, 1902.

J. T. BRIDGES,

Register.

NOTE. The officer before whom the deposition is taken should call the attention of the witness to the following section of the Revised Statutes and state to him that it is the purpose of the Government, if it be ascertained that he testifies falsely, to prosecute him to the full extent of the law.

# REVISED STATUTES OF THE UNITED STATES.

## Title LXX—Crimes, Chap. 4.

Sec. 5392. Every person who, having taken an

oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed is true, wilfully and contrary to such oath states or subscribes any material matter which he does not believe to be true, is guilty of perjury, and shall be punished by fine of not more than two thousand Dollars, and by imprisonment at hard labor, not more than five years; and shall moreover, thereafter, be incapable of giving testimony in any court of the United States until such time as the judgment against him is reversed. (See Sec. 1750.)

Roseburg, Oregon, May 7, 1902.

Mrs. Alice La Raut, being first duly sworn deposes and says that she is the identical person who made application to purchase the SE¼ of Sec. 26, Tp. 21, S. R. 3 West; .....that she purposes to purchase said land with her separate money, in which her husband has no interest or claim; that said entry is made for her sole and separate use and benefit; that she has made no contract or agreement whereby any interest whatever therein will inure to the benefit of her husband, or any other person; and that she has never made an entry under said act, or derived any interest whatever directly, or indirectly, in or from a former entry made by any person, or association of persons.

MRS. ALICE LA RAUT.

Subscribed and sworn to before me this 7th day of  
May, 1902.

J. T. BRIDGES,  
Register.

12127-7.

No. 9242.

RECEIVER'S OFFICE AT ROSEBURG, ORE.

May 7, 1902.

Act June 3, 1878.

Received from Mrs. Alice La Raut, of Saginaw,  
Lane County, Oregon, the sum of Four Hundred  
Dollars and ..... cents; being in full for the  
SE $\frac{1}{4}$  quarter of Section No. 26, in Township No. 21,  
S. of Range No. 3 W., containing 160 acres and .....  
hundredths, at \$2.50 per acre.

J. H. BOOTH,  
Receiver.

\$400.

Received R. & R. Fee \$10.00.

\$.51c testimony fee received. Number of written  
words 225, Rate per 100 words, 22 $\frac{1}{2}$  cents.

TIMBER LAND ACT JUNE 3, 1878, NOTICE  
FOR PUBLICATION.

United States Land Office.

Roseburg, Oregon, February, 7, 1902.

Notice is hereby given that in compliance with the  
provisions of the Act of Congress of June 3, 1878, en-  
titled "An Act for the sale of timber lands in the  
States of California, Oregon, Nevada, and Washing-  
ton Territory," as extended to all the public land  
states by Act of August 4, 1892, Mrs. Alice La Raut,

of Saginaw, county of Lane, State of Oregon, has this day filed in this office his sworn statement No. 2027 for the purchase of the SE¼ of Section No. 26, Township 21, S. South of Range 3 West, and will offer proof to show that the land sought is more valuable for its timber or stone than for agricultural purposes, and to establish his claim to said land before the Register and Receiver of this office, at Roseburg, Oregon, on Wednesday, the 7th day of May, 1902.

He names as witnesses:

Stephen A. La Raut, of Saginaw, Oregon.

George Briggs, of Mabel, Oregon.

James Lee, of Cottage Grove, Oregon.

Daniel H. Brumbaugh, of Cottage Grove, Oregon.

Any and all persons claiming adversely the above-described lands are requested to file their claims in this office on or before said 7th day of May, 1902.

J. T. BRIDGES,

Register.

This notice must be published once a week for ten consecutive weeks in a newspaper published nearest the land, and must also be posted in a conspicuous place in the land office for the same period.

CERTIFICATE AS TO POSTING OF NOTICE.

United States Land Office.

Roseburg, Oregon, May 7, 1902.

I, J. T. Bridges, Register of the Land Office, certify that the above notice was by me posted in a conspicuous place in my office during the period of sixty (60) days and over, I having first posted the same

on the 7 day of February, 1902.

I further certify that there are no adverse claims to the land herein described known to this office.

J. T. BRIDGES,

Register.

### TIMBER AND STONE LANDS.

(Testimony of Claimant.)

Mrs. Alice La Raut, being called as a witness in support of his application to purchase the SE $\frac{1}{4}$  of Section 26, Township 21, S. Range 3 West, testifies as follows:

Question 1. What is your age, post-office address and where do you reside?

Answer. 40 years, Saginaw, Oregon, and I reside there.

Ques. 2 Are you a native born citizen of the United States; and if so, in what State or Territory were you born?

Ans. I was born in Oregon.

Ques. 3. Are you the identical person who applied to purchase this land on the 7th day of February, 1902, and made the sworn statement assigned by law before the Register (or Receiver) on that day?

Ans. I am.

Ques. 4. Are you acquainted with the land above described by personal inspection of each of its smallest legal sub-divisions?

Ans. I am.

Ques. 5. When and in what manner was such inspection made?

Ans. On the 4th day of February, 1902, by going

over the land.

Ques. 6. Is the land occupied, or are there any improvements on it not made for ditch or canal purposes, or which were not made by or do not belong to you?

Ans. No.

Ques. 7. Is the land fit for cultivation, or would it be fit for cultivation if the timber were removed?

Ans. No.

Ques. 8. What is the situation of this land, and what is the nature of the soil, and what causes renders the land unfit for cultivation.

Ans. It is mountainous and the soil is rocky.

Ques. 9. Are there any salines, or indications of deposits of gold, silver, cinnabar, copper, or coal on this land? If so, state what they are, and whether the springs or mineral deposits are valuable.

Ane. No.

Ques. 10. Is the land more valuable for mineral or any other purposes than for timber or stone thereon, or is it chiefly valuable for timber or stone?

Ans. The land is covered with good timber and unfit for any other purpose.

Ques. 12. What is the estimated market value of the timber standing upon this land?

Ans. About \$800.00.

Ques. 13. Have you sold or transferred your claim to this land since making your sworn statement, or have you directly, or indirectly made any agreement, or contract in any way or manner with any person whomsoever, by which the title which you may acquire from the Government of the United States may inure, in whole

or in part, to the benefit of any person except yourself?

Ans. I have not.

Ques. 14. Do you make this entry in good faith for the appropriation of the land exclusively to your own use and not for the use or benefit of any other person?

Ans. I do.

Ques. 15. Has any other person than yourself, or has any firm, corporation, or association any interest in the entry you are now making, or in the land, or in the timber thereon?

Ans. No.

MRS. ALICE LA RAUT.

I hereby certify that the above named Mrs. Alice LaRaut, personally appeared before me; that I verily believe the affiant to be the person he represents himself to be; and that each question and answer in the foregoing testimony was read to him in my presence before he signed his name thereto, and that the same was subscribed and sworn to before me at Roseburg, Oregon, this 7th day of May, 1902.

J. T. BRIDGES,

Register.

I hereby certify that I have tested the accuracy of affiant's information and the bona fides of this entry by a close and sufficient oral cross-examination, of the claimant and his witnesses, directed to ascertain whether the entry is made in good faith for the appropriation of the land to the entryman's own use, and not for sale or speculation, and whether he has conveyed the land or his right thereto, or agreed to make any such con-

veyance or whether he has directly, or indirectly entered into any contract, or agreement in any manner with any person, or persons whomsoever, by which the title that may be acquired by the entry . . . in whole or in part to the benefit of any person, or persons, except himself, and I am satisfied from such examination that the entry is made in good faith for entryman's own exclusive use and not for sale or speculation, nor in the interest nor for the benefit of any other person, or persons, firm or corporation.

J. T. BRIDGES.

Register.

Land Office, at Roseburg, Oregon.

May 7, 1902.

No. 9242.

It is hereby certified, that in pursuance of law, Mrs. Alice M. LaRaut, residing at Saginaw, in Lane County, State of Oregon, on this day purchased of the Register of this office the SE $\frac{1}{4}$  of Section No. 26, in Township No. 21 S. of Range 3 W. of the Will. (Principal Meridian) Ore., containing 160 acres, at the rate of Two dollars and 50 cents per acre, amounting to Four Hundred dollars and . . . cents for which the said Mrs. Alice M. LaRaut has made payment in full as required by law.

NOW, THEREFORE, be it known that, on presentation of this certificate to the COMMISSIONER OF THE GENERAL LAND OFFICE, the said Mrs. Alice LaRaut, shall be entitled to receive a Patent for the lot above described.

J. T. BRIDGES,

Register.

No. 9242.

## CASH ENTRY.

Land Office at Roseburg, Oregon.

Sec. 26, Town. 21, S. Range 3 W.

5-31-04, No. Action Required by

Div. P. Entry INTACT Ref'd. C.

O. K.

G. &amp; P.

Approved June 4, 1904.

By F. L. L. H. Ex. Clerk.

Division C.

Patented August 3, 190..

Recorded in Vol. 134, Page 199.

C. J. Howard, is called as witness for the government, first duly sworn, testifies as follows:

## Direct Examination.

(Questions by Mr. JOHN McCOURT.)

Q. What business are you engaged in, or were you engaged in in February, 1902?

A. The newspaper business.

Q. Where?

A. Cottage Grove.

Q. What paper were you conducting there at that time?

A. The Bohemian Nuggett.

Q. I hand you a book designated as "Ledger No. 2" and ask you whether or not that was a book kept by you in connection with your newspaper business at that time?

A. Yes, sir.

Q. Do you recall publishing in your newspaper a notice of final proof of the entries in controversy in this case?

A. I do.

Q. Can you refer to your book, or do you recollect what was paid you for each of those notices?

A. Only by the book.

Q. Do you recall who paid you?

A. I do not.

Q. Does the book show?

A. It does not.

Q. Does it show when you were paid?

A. Yes, I think it does.

Q. Will you refer to the book and show what was charged for publishing the final proof notice of each of those entries, and when the same were paid to you?

A. The date of payment according to this account was Feb. 26, 1902.

Q. And what date did you make the charge for service?

A. That was on the 25th of February, 1902. I am not quite sure as to what that would mean. Whether or not that was when I checked this up and entered them in this book. Of course, it may have been when I received them. That would depend upon the first publication.

Q. According to that you probably received the money with the notice?

A. Yes, I am not sure I presume likely I did.

Q. What was the amount charged at each entry?

A. \$10.00 in each instance.

Q. And was that amount paid in each instance?

A. I assume that it was.

Q. What does the book show?

A. That is what they show.

Q. And they show all payments made on the same day?

A. Yes sir.

Q. Is there anything in the book there to indicate, or which indicates to you whether or not the same person paid them all?

A. I cannot say as to that.

Q. What does that check mark naturally indicate there?

A. I do not know. It would indicate one of several things. At times there was more or less errors in the original notices from the land office and it might be possible in checking up I used that mark and again it might be possible that I used it in checking up the amount due at that time, or the amount that was paid me at that time.

Q. You do not find that same check in relation to any of the others?

A. No, I have no knowledge of the check. I do not know why it should be put there.

#### Cross Examination.

(Questions by Mr. A. H. TANNER.)

Q. Those notices which were published in your paper were the ordinary usual forms for entrymen in making final proof at the Roseburg Land Office?

A. Yes.

GEORGE W. RIGGS, is called as a witness for the government and being first duly sworn, testified as follows:

Direct Examination.

(Questions by Mr. JOHN McCOURT.)

Q. What is your business, Mr. Riggs?

A. Well, I have been doing so many kinds of work it is hard to say.

Q. I will ask you whether you ever engaged in the timber cruising business?

A. Yes sir.

Q. Were you ever employed by the Booth-Kelly Lumber Co.?

A. Yes sir.

Q. When was that?

A. Well, I worked for them seven or eight years until the last year.

Q. Within the last year?

A. Yes, until that time I was working for them the greater part of the time.

Q. You were working for them in 1901 and 1902?

A. Yes sir.

Q. Did you ever cruise any timber in townships twenty-one south of ranges two and three west of the Willamette Meridian?

A. Yes.

Q. Did Mr. Brumbaugh assist you in your work?

A. Yes sir.

Q. What function was he performing at that time?

A. He was Post Master for us.

Q. Who were you in the employ of at the time you cruised this land?

A. The Booth-Kelly Company.

Q. You do not know anything about the later location of that land by the entrymen?

A. No, sir.

Q. Do you know when they were entered with reference to the time they were cruised?

A. No.

(No Cross Examination, Witness excused.)

It is stipulated and agreed by and between the parties hereto, that the money for the payment of the purchase price to the government for the land involved in the entries in controversy, including land office fees of Stephen LaRaut, Mistress Alice LaRaut, Ethel LaRaut, Lucy LaRaut and Edward Jordan, together with the publication fees and the expenses of the entrymen in taking up the land and going to and from the land office were furnished and paid by the Booth-Kelly Lumber Company.

It is understood however, that the defendants may show the circumstances and agreement under which said sums of money were paid, and the plaintiff may show by evidence further than the stipulation itself, the manner or agreement under which the same was paid or furnished.

Counsel for the government in connection with said stipulation offers in evidence the letter of J. H. Booth, President of the Douglass National Bank, of Roseburg, Oregon, bearing date December 15th, 1910, and

the same is received and filed, marked, "Plaintiff's Exhibit 'F'", as follows, to-wit:

"DOUGLAS NATIONAL BANK.

Roseburg, Oregon.

December 16, 1910.

HON. A. C. WOODCOCK,

Eugene, Oregon.

Dear Sir:-

At request we send following records from our Draft Remittance Register to our San Francisco correspondent:

May 7, 1902.

Received draft of W. W. Brown, Asst. Cashier, Eugene Loan and Savings Bank, No. 38070, favor Ed Jordan, amount \$400.00, received, J. H. Booth, Receiver.

No. 33071, same bank, favor S. A. LaRaut,  
amount \$400.00

No. 33072, same bank, favor Mrs. F. A. La-  
Raut, 400.00

Both of these received by us from Mr. La Raut.  
On May 10, 1902.

No. 33087, same bank, favor, Miss Lucy La-  
Raut, amount, 400.00

No. 33088, same bank, favor, Miss Ethel La-  
Raut, amount 400.00

Both received from J. H. Booth, Receiver Land Office.

In other words, the draft to Mr. LaRaut, and wife were cashed by him at the bank; the other three were

received by us from J. H. Booth, Receiver, for credit to his account as Reveiver.

Very truly,  
J. H. BOOTH,  
President."

It is further stipulated and agreed that the purchase price paid for said land together with land office fees and commissions were as follows:—Ed. Jordan, purchase money, \$400.00, fees and commission, \$10.51.

Stephen A. LaRaut, purchase money, \$400.00, fees and commissions, \$10.51.

Alice LaRaut, purchase money, \$400.00, fees and commissions, \$10.51.

Ethel M. LaRaut, purchase money, \$407.05, fees and commissions, \$10.49.

Lucy LaRaut, purchase money, \$407.05, fees and commissions, \$10.49.

D. H. BRUMBAUGH is called as a witness for the government and being first duly sworn testifies as follows:

DIRECT EXAMINATION Questions by JOHN McCOURT.

Q. Where do you live Brumbaugh?

A. About six miles southeast of Cottage Grove.

Q. What is your business?

A. Rancher now.

Q. Did you ever work for the Booth-Kelly Lumber Co.?

A. Yes, sir.

Q. When?

A. A number of different times since about 1900,

—I started ten or eleven years ago.

Q. Were you working for them in 1902?

A. At times, yes.

Q. What sort of work were you doing for them?

A. Running a compass for a cruiser.

Q. Cruising?

A. Running a compass for a cruiser.

Q. Did you ever cruise any in township twenty-one, south of range two and three west?

A. Yes, sir.

Q. When did you do that cruising?

A. Well, I cannot give you the dates.

Q. Do you recall the circumstances of showing claims in that township and those two ranges to Stephen La Raut, and wife, and other members of his family?

A. Yes, sir, I showed them the claims.

Q. How long prior to that was it that you cruised the land?

A. I cannot tell you exactly—I think it was probably two or three months, it might have been longer than that.

Q. How did you happen to cruise that particular land?

A. Well, I was running the compass for the cruiser and we cruised the land right straight through.

Q. In whose employ was you at that time?

A. Well, Mr. Kelly and Mr. Booth,—Mr. Kelly is the one that paid me the money.

Q. How did you happen to show these people the land, and who did you show the land to?

A. Well, there was three of the La Rauts,—ladies and one gentleman, and they brought the numbers of certain lands to me from Mr. Kelly,—he requested me to show them certain lands which I done.

Q. How did Mr. Kelly ask or direct you to do that?

A. He simply wrote the numbers, and sent them to me, and requested me to show them that land.

Q. Who else was there besides the three La Raut ladies?

A. Well, there was Dunbar.

Q. What Dunbar?

A. Harry I think, and Mr. Tom Roach,—I think his name is Tom, and there was Ed. Jordan,—I ain't sure.

Q. Did you show the land all at the same time?

A. No, sir.

Q. How were they related to each other, as to time?

A. Well, they came to my place and I went right along with them. They went horseback generally and I went afoot. I never was out but one day at a time, but I think I was about three or four weeks showing all these people that land at different times.

Q. What members of the party went first?

A. Now, you have got me. I do not recollect.

Q. Did all of the La Raut family go together?

A. No, there was Mr. La Raut and his wife, I suppose. I think they were the first, but I wouldn't swear to it, and then Mr. Dunbar brought the two young ladies.

Q. When did Roach and Jordan go?

A. I think they were the last ones. I am pretty sure that they were, but I wouldn't be positive about it.

Q. Was there any one else with you as locator or cruiser?

A. No, sir. Mr. Dunbar came with the two young ladies.

Q. Was Mr. Robinson there at one time?

A. He was there with Mr. Dunbar, yes.

Q. In his request that you show these people the land, did Mr. Kelly make any request that you show it to all of them at the same time?

A. No,—just these people that came there,—There was two at a time.

Q. Did you act as a witness for these people?

A. I think I did, but I did not hardly think I did until I came down here, and saw the papers, so I guess I did.

Q. Do you recall it now?

A. I think I recall being a witness for those young ladies.

Q. Do you know how many trips you made to Roseburg?

A. I think I made two trips.

Q. Who paid your charges or expenses for showing these people the land and going to Roseburg?

A. Mr. John Kelly paid my wages and expenses.

Q. John Kelly, a member of the firm of Booth-Kelly Lumber Co.

A. I suppose he is a member. Of course, I am

positive. I think he is or was at that time.

Q. You knew he was at that time?

A. I suppose he was.

Q. At that time what was Mr. Harry Dunbar doing?

A. I do not know, I was not acquainted with him until he came up there. He has been bookkeeper since that.

Q. Bookkeeper for whom?

A. For the Booth-Kelly Company.

Q. What was John Roach doing?

A. I think he was bookkeeper too. I never knew him until he came up there.

Q. How long after that was it that you saw Dunbar working for the Booth-Kelly Lumber Co.?

A. When I went down to the office I saw him working on the books.

Q. Was it a short time or long time?

A. I do not think it was over two or three weeks. It might have been longer.

Q. Did you see Roach there at that time?

A. Yes.

Q. What was he doing?

A. He was working on the books.

Q. Was that a letter written to you that John Kelly sent you?

A. I think only the numbers, and a statement with his name to show these people that land.

Q. Did the Company pay you for that labor?

Counsel for defendant objects to the question on the ground that the witness has stated that Mr. Kel-

ly paid him.

Q. How did he pay you?

A. I think it was three dollars or two and a half.

Q. How did he pay you?

A. He paid me in money if I am not badly mistaken.

Q. Where did he pay you?

A. I do not know. I think part of it was paid in Eugene.

Q. At the office of the company?

A. Yes.

Q. At the office of the Booth-Kelly Lumber Company?

A. Yes.

Q. Did you ever perform any services for Mr. John Kelly independently of the company?

A. I do not know. He was the one I always done business with. I do not know whether he was doing it for the company, or doing it for himself. I cannot say as to that.

Q. Who did you understand you were employed by?

Counsel for defendant objects to the question, as immaterial and irrelevant.

A. Well, I supposed it was the company, but I do not know.

Q. You did all your business with Mr. Kelly?

A. Sure.

Q. Do you know what office he held in the company at that time?

A. No, I do not.

## CROSS-EXAMINATION.

(Questions by Mr. A. H. TANNER).

Q. How long had you been in the employ of the Booth-Kelly Lumber Co.?

A. I think it was probably about a year or about a year and a half since I first commenced work for them at that time.

Q. Now, you say that you did that work principally for Mr. Kelly?

A. Well, as I said before, he is the man that paid me. That is all I know. I supposed he was the company.

Q. Did you have any conversation with these people that came there with these numbers about showing them the land?

A. But very little, because I was not acquainted with them. I simply showed them the land that I was directed to show them, that was all.

Q. You understood that they intended to enter the land?

A. Sure.

Q. They did go to Roseburg and file on the land did not they?

A. Yes, sir.

Q. You were a witness for them when they proved up?

A. Yes.

Q. Now you have worked for John Kelly for a number of years in cruising?

A. It has been ten or eleven years something like that since I first went to work.

Q. You did a good deal of his business individually, as well as some for the company?

A. I suppose so. That is all I know about it.

(Witness excused.)

Mrs. M. S. APPLESTONE, is called as a witness for the government and being first duly sworn testifies as follows:

Direct Examination.

(Questions by JOHN McCOURT.)

Q. Where do you live Mrs. Applestone?

A. Lewiston, Idaho.

Q. How long have you lived there?

A. I have lived there three years.

Q. Do you know Mrs. Alice La Raut?

A. Yes.

Q. And Stephen La Raut?

A. Yes.

Q. What relation is Mrs. La Raut to you?

A. My mother.

Q. And Mr. La Raut?

A. My step-father.

Q. Do you know Ethel and Lucy La Raut?

A. Yes.

Q. One of them now being Mrs. Lewis?

A. Yes, sir.

Q. Which one of them is Mrs. Lewis?

A. Ethel.

Q. Where were you living in 1902, and prior thereto in 1901?

A. In 1901 I was living in Portland I think. Part

of the time with my mother and part of the time in Portland.

Q. Where was your mother living at that time?

A. At Saginaw, Oregon.

Q. Do you remember being up at your mother's home in the spring of 1902 and summer?

A. Yes, sir.

Q. Do you know anything about the entry of some timber land there by your mother?

A. Yes, sir.

Q. And the other members of the family?

A. Yes, sir, I do.

Q. Just state now what you know about that, and what information you have about it.

A. Well, at the time I was there, they had come off from the claim.

Q. You mean they had been out to visit their claims?

A. Yes, sir, they had been out to see the land.

Q. Well, who had been to see the land?

A. My mother and step-father had been.

Q. Who else?

A. And Ethel. That is, I know that, because they were at the house there and I knew that they had taken up a timber claim each.

Q. Now, did you have any conversation, or was there any conversation conducted and carried on in the family there which you heard in relation to these timber claims?

A. Yes, they talked about them.

Q. At different times?

A. Yes, sir.

Q. What did they say about the timber claims—how they happened to take them up, and all about it.

A. I talked to my mother about it specially, and she told me that she had taken up a claim, and had taken it up for Mr. Booth.

Q. What Mr. Booth?

A. Robert Booth.

Q. How did she say she come to take it up for Robert Booth?

A. I do not remember just the words.

Q. Go ahead now and state the conversation that occurred there without being asked any questions, just go on.

A. Well, we had talked about it so many times, at different dates, and she said that she had taken up a claim for Robert, and they were to be paid \$100.00,—that is mama was to be paid \$100 for her claim.

Q. Who else was present when you had this conversation with your mother?

A. I do not remember that there was anybody.

Q. State whether or not Mr. Stephen La Raut and Ethel LaRaut was present at any of these conversations?

A. I do not remember that they were. I remember that they were in the house.

Q. You do not know whether they heard the conversation or not?

A. No, I do not.

Q. What further occurred in regard to these claims?

A. In what way?

Q. Do you know anything about the \$100.00 being paid?

A. Yes I know mama was paid \$100.00.

Q. How do you know that?

A. Well, she told me.

Q. Did you see the money or evidence of it?

A. Yes I saw the money.

Q. Do you know anything about Mr. La Raut and Ethel La Raut's claim and the payment for them?

A. No, I do not know anything about theirs.

Q. Do you recall the trip to Roseburg to make the proof for them?

A. Yes, I was there at the time.

Q. Did anything occur prior to that in relation to the entries, I refer to the receipt by your mother and step-father, and step-sister of forms for making final proof, showing the questions and answers?

A. Yes, I remember them having the questions.

Q. All of them?

A. Mama especially I know about. I think they were for my mother and step-father, because they had filed at that time and were to prove up.

Q. Have you examined the final proof testimony given by your mother in relation to this timber and stone entry of hers?

A. Only that I saw the questions that they should answer.

Q. Do you know whether or not the paper that she had there and your step-father had there at that time

contained questions that would be put in these final proof papers?

A. Yes.

Q. What conversation did you and your mother have in relation to those papers,—those final proof papers?

A. Well, at that time, I could not understand it because the questions were answered.

Q. What did you say about it?

A. I asked her why they were answered.

Q. What did she say?

A. I do not know what answer she gave me.

Q. Was this before she had gone to Roseburg to make her proof?

A. Yes, sir.

Q. Did she say who had sent her those papers?

A. Yes, sir.

Q. Who did she say?

A. Robert Booth.

Q. What relation, if any, does she bear to Robert Booth?

A. Sister-in-law.

Q. Where is your mother and step-father now?

A. In Canada.

Q. What part of Canada?

A. Alberta.

Q. And this money that your mother had there, did she have that before she went to make proof,—before she went down to Roseburg to make final proof, or did she get it afterwards, or do you know?

A. I do not remember.

Q. Was it in the neighborhood of the time she made proof or do you know?

A. I do not recall whether it was before or after, —I do not remember whether it was before she proved up, or afterwards.

Q. Do you recall whether or not the whole family went down to make proof at the same time, or on different days some of them?

A. They went on different days, I think.

Q. What members went together?

A. My mother and step-father went together.

Q. And the two girls went together?

A. I do not remember.

Q. They did not go at the same time your mother and step-father went?

A. No.

Q. Where was Ethel living at that time?

A. In my mother's house.

Q. Where was Miss Lucy La Raut living?

A. Living near Wilbur, Oregon.

Q. In whose employ was she at that time?

A. I do not think she was in any one's employ.

Q. Did Lucy live at Saginaw?

A. She lived with her mother. It was Lucy who lived with her mother.

Q. Where did Lucy live?

A. She lived near Wilbur.

Q. Did either one of those young ladies live at your mother's home?

A. Ethel lived at my mother's home.

Q. Ethel lived at your mother's home, and Lucy

lived with her mother?

A. Yes.

Q. How long was it that these papers were received by your mother containing questions and answers prior to the time that she went down to Roseburg to make proofs?

A. A few days.

Q. Do you know whether or not Lucy received a similar set of papers?

A. I do not.

Q. Do you know whether or not your step-father received a similar set of papers?

A. It was step-father and mother that received them.

Q. Did your step-father ever discuss the matter of his taking up a timber claim?

A. Yes sir.

Q. In your presence?

A. Not particularly that I remember of.

Q. Was Ethel present at any time when your mother was discussing the manner in which the timber claims were being taken?

A. Not that I remember of.

Q. What was your step-father doing at that time?

A. He was working for the Booth-Kelly Company.

Q. And your mother?

A. Keeping house.

Q. Do you know what was their financial condition at that time?

A. Yes I know that they were very poor at that

time.

Q. And how about the Misses La Raut, Lucy and Ethel?

A. I do not know.

Q. You do not know what their financial condition was?

A. No.

Q. Did you know a young man by the name of Harry Dunbar?

A. Yes, sir.

Q. Do you know what he was doing at that time?

A. He was bookkeeper for the Booth-Kelly Company.

Q. What connection did Robert Booth have with the Booth-Kelly Lumber Co., if you know.

A. I do not know.

Q. What did your mother say that she was going to get besides this \$100.00,—what was Booth going to pay in addition to the \$100.00?

A. That was all she was to receive.

Q. Who was to pay the expenses for the land and all that?

A. Mr. Booth.

Q. Did she assent to that?

Counsel for defendant objects to the question as leading.

A. Yes, sir.

Q. Do you know who did pay her expenses to Roseburg?

A. Yes, sir.

Q. Who.

A. Mr. Booth.

Q. Do you know when it was that Mr. Booth promised to pay your mother for taking this claim, with relation to the time she filed on the land?

A. No I do not.

Q. Do you know whether that was before or after she filed on it?

A. No I do not know.

Q. You do not know about that?

A. No.

Q. Did she say anything about who selected the land for them or for her?

A. No I do not recall that.

It is stipulated and agreed by and between the parties hereto, that Robert A. Booth, was manager of the Booth-Kelly Lumber Company at the time in controversy in this suit, and that John Kelly was Vice-President, or John F. Kelly was Vice-President, of the corporation during the times in controversy.

#### Cross-Examination.

(Questions by A. H. TANNER.)

Q. How long have you lived in Idaho?

A. Three years.

Q. Where did you live before that?

A. I lived in Portland and with my mother in Saginaw.

Q. You say you were living with your mother at the time they took these timber claims?

A. I was not living there, but I was there at the time.

Q. You were there visiting at that particular time?

A. Yes.

Q. How long were you there at the time they were about to take up these timber claims?

A. I do not remember how long I was there.

Q. Well, were you there while they were taking the claims,—when they went out to see them, and so on, or did you come after that?

A. I came the day after they came from the land.

Q. Had they been living on the land?

A. No, they had been away one day.

Q. They had been up to the land before you got there?

A. Yes before I got there.

Q. And you talked with your mother about taking up the timber claim?

A. Yes, sir.

Q. And she told you that she was going to take up a claim did she?

A. She told me she had taken one.

Q. And that your step-father Mr. La Raut had also taken a claim?

A. Yes sir.

Q. And that they were going to Roseburg to prove up,—did she tell you about that?

A. I was there at the time they went.

Q. You were there at the time they went to Roseburg to file on the land, or make application to purchase the land,—that was the time they came from the land?

A. I do not remember whether it was to file or prove up on them.

Q. Were you there when they went to Roseburg to file on the lands?

A. I do not recall whether it was the time they went to file on the land, or whether it was to prove up.

Q. You say you were there at the time they came back from inspecting the lands?

A. Yes.

Q. In the natural course of events, they would have gone to Roseburg to file on the land?

A. Yes.

Q. Were you there then?

A. Yes.

Q. How long were you there at that time?

A. I do not remember.

Q. Can you state anywhere near how long you were there?

A. No, I do not remember.

Q. Now, when was the first conversation that you had with your mother about the matter?

A. It was the day I got there.

Q. That was the day she told you she was going up to file on the claim?

A. I do not know as she told me, I was there when she went.

Q. What did she tell you she was going to do?

A. I do not recall whether she said they were going to file, or prove up. I think it must have been the time she filed.

Q. Did they go to Roseburg a day or two after that?

A. I do not recall how long after that it was that they went.

Q. Was that the extent of the conversation? The day you got there, or the next day, that she had taken up a timber claim?

A. It was generally talked about.

Q. Well, in what way do you mean. Do you mean she told you she was going to take up a timber claim?

A. She told me she had taken up a timber claim.

Q. Now, were you there when they went to Roseburg to prove up.

A. I was only there once when they were in Roseburg.

Q. Do you know whether it was the time they went to Roseburg to file on the land or whether they went there to prove up, that you were there?

A. No I do not recall which it was.

Q. Now the conversation that you had about their filing on these claims was with your mother mostly as I understand it?

....A. Yes.

Q. You did not talk with any of the rest of the family about it?

A. Not that I remember of.

Q. You say she told you that she had taken up a claim, and what was it you said she said about Robert Booth—give her exact language now if you can.

A. Well, she told me that they were taking up a

claim for Robert.

Q. Is that all she said about it?

A. No.

Q. Well, state the rest of it.

A. Well, she said they had taken up a claim for Robert, and she also told me what they were to get for it.

Q. What did she tell you they were to get for it, or that she was to get for hers?

A. She told me that she was to get \$100.00.

Q. Did she tell you that she was to get anything more for it?

A. No.

Q. Do you know whether she did get anything more?

A. Yes she got \$100.00 for it. I did not know at the time, but I know she got fifty dollars afterwards.

Q. Did not she get some more at another time?

A. Not that I know of.

Q. You do not know whether she did or not?

A. Well, up to six months ago, I knew that she had not.

Q. When did they go to Canada?

A. About six months ago.

Q. You know she did get an additional payment besides the \$100.00, that she spoke of?

A. Yes.

Q. You did not have any such conversation with your step-father that you say you had with your mother?

A. Not that I remember of.

Q. You never had any such conversation with Ethel?

A. No, sir.

Q. Or with Lucy?

A. No, sir.

Q. You do not know anything about why they took up their timber claims or anything about it?

A. I do know why,—my mother told me.

Q. I mean, outside of what your mother told you?

A. No, I do not know. My step-father took up his claim for the same reason that my mother did.

Q. Who told you why he took up his claim,—did he ever tell you himself, or was it your mother?

A. I do not recall whether he did or my mother did.

Q. Is it not a fact that you are testifying now entirely from what your mother told you about it.

A. Yes, I suppose, and what I knew.

Q. Do you know whether Robert Booth ever talked to your mother or your father about it at all?

A. I do not.

Q. You do not know who it was who suggested to them that they take a timber claim do you?

A. Yes I do.

Q. Well, where did you get that information from?

A. I got it from my mother.

Q. What did your mother tell you?

A. She told me that Robert had asked them to take up a claim.

Q. That Robert Booth had asked her?

A. Had asked her and my step-father and Ethel, they were the ones that were there.

Q. Do you mean to say that your mother told you that Robert Booth had talked to her?

A. He did not talk to her personally that I know.

Q. Your mother did not tell you that Robert Booth had ever talked to her personally about it did she?

A. No, she did not.

Q. Now, you say that you saw this \$100.00 that your mother had there?

A. Yes, sir.

Q. When was it that you saw that?

A. I do not recall the time.

Q. Was it after she had proved up on the claim?

A. I do not remember.

Q. Is there anything by which you can fix the time about when it was?

A. No I do not remember whether it was before or afterwards.

Q. Did she tell you where she had gotten this \$100.00?

A. Yes, sir.

Q. What did she say about it?

A. She said that Robert had given it to her.

Q. That Robert had given it to her personally?

A. To them, I do not know which person he gave it to.

Q. Did she tell you which person?

A. No.

Q. Did she tell you that Robert Booth had given

it to either of them?

A. Yes, she said that Robert had given it to them

Q. Was there more than \$100.00 of it—did you see the \$100.00 that your step-father had too?

A. No.

Q. You do not know whether he had a \$100.00 or not?

A. Yes.

Q. How do you know?

A. Because my mother said he had and he said he had.

Q. Did he tell you about where he had gotten it?

A. Yes, he talked about it.

Q. Who did he say had paid it to him?

A. I do not remember, he told me but I do not remember. It was not kept a secret.

Q. Did he tell you that Robert Booth had paid it to him?

A. I do not recall whether he told me or not. I remember it was talked about.

Q. Talked about between you and your mother and the children.

A. No my step-father talked about it. It was not kept from me,—it was not considered a secret.

Q. How long did you continue to live at Saginaw and visit your people there?

A. I never lived there.

Q. How long did you continue to visit your people there?

A. Until four years ago.

Q. Then you went to Idaho?

A. No, sir I have only lived in Idaho three years.

Q. Three years?

A. Yes.

Q. Where did you live the other year?

A. In San Francisco and Spokane, Washington.

Q. Anywhere else?

A. No sir.

Q. When did you first tell anybody else about hearing these conversations that you talked about with your mother?

A. I do not remember.

Q. Well, about when was it? Do you remember about when it was?

A. No I do not remember.

Q. Well, who was it that you talked to about it outside of the family?

A. I do not know that I talked to anybody about it.

Q. You have not talked to anybody at all except your mother and father?

A. I might have spoken of it.

Q. Well, you know whether you did or not? I want to know whether you did or not talk to anybody else about it,—you must know whether you did or not?

A. Yes, I suppose I did speak of it, to probably several different ones, but I do not recall who.

Q. Did you talk to any special agent of the government about it?

A. I do not know. I have spoken to Mr. McCourt.

Q. Mr. McCourt, when did you talk to him,—lately?

A. Yes.

Q. Is he the first person you talked to about it outside of your mother and father?

A. He is the first person that I talked to in a business way,—I guess that might do.

Q. What do you mean by “in a business way”, what do you mean by that?

A. I mean that I was asked questions and I simply answered them, that is all.

Q. How did they come to find out that you knew anything about it?

A. I do not know.

Q. When was it you talked with Mr. McCourt about it first?

A. I do not remember just how long ago.

Q. Was it about the time that Robert Booth was being tried here?

A. Yes sir.

Q. Did the government have you subpoenaed here as a witness at that time?

A. Yes sir.

Q. Were you called as a witness?

A. No sir.

Q. Was that the time that Mr. McCourt talked to you about these entries?

A. Yes sir.

Q. Did you talk to any land agent about it?

A. No sir.

Q. Have you talked to any land agent since, or

any special agent of the government?

A. No sir, I have not.

Q. As I gather from your testimony, your mother was a sister of Ethel La Raut and Lucy La Raut?

A. No sir. My Step-father is a brother of theirs.

Q. At the time that you came down here when Mr. Booth's trial was on—how did you happen to come at that time?

A. I was subpoenaed.

Q. Subpoenaed by the government?

A. Yes sir.

Q. And then you say after you came down here Mr. McCourt first talked to you about it?

A. Yes sir.

Q. Did you talk to anybody up there about it?

A. No, sir.

Q. How did they come to subpoena you,—do you know?

A. I do not know.

Q. You had not talked to any one else, except your mother and father about it before that time?

A. I said I might have talked, or spoken about it to different ones.

Q. How long were you here at the time you were subpoenaed?

A. I do not remember.

Re-Direct Examination.

(Questions by Mr. JOHN McCOURT.)

Q. Did your mother state to you anything about the arrangement that Ethel La Raut had made for taking up her timber claim and how much she was to

get for hers?

A. Yes, she said it was the same.

Q. The same as she was getting?

A. Yes.

Q. You say your mother got fifty dollars more—when was that?

A. I do not know just how long it was ago. I think probably eight or nine months. It was that way because she did not tell me the exact date.

Q. You say eight or nine months?

A. Eight or nine months ago.

Q. How was it with relation to the time you were down here as a witness?

A. What?

Q. The payment of this additional fifty dollars—when was it made, or received by your mother in relation to the time you were down here as a witness,—was it after that, or before you were down here as a witness at the time Robert Booth was being tried a couple of years ago?

A. I really do not know—I understood it was afterwards.

(Witness excused.)

..

LUCY LA RAUT, is called as a witness for the government and being first duly sworn testified as follows:

#### Direct Examination.

(Questions by Mr. JOHN McCOURT.)

Q. Where do you live?

A. In Eugene at present.

Q. What relation if any are you to Mr. Robert

Booth?

A. I am sister-in-law.

Q. And to Eethel La Raut?

A. I am Ethel's older sister.

Q. And to Mrs. Alice La Raut?

A. Sister-in-law.

Q. Stephen La Raut was your brother?

A. Yes sir.

Q. What occupation were you engaged in February, 1902, and for a few months prior thereto?

A. I was at home with my parents.

Q. When did you become post-mistress at Saginaw?

A. You have the wrong woman.

Q. That was your sister?

A. That was my sister Ethel.

Q. When was she post-mistress there?

A. She was post-mistress there in 1902. I do not remember how long prior she left.

Q. Was she post-mistress at the time you took this timber claim.

A. Yes.

Q. Did she have any other employment besides being post-mistress?

A. No.

Q. Was not she clerking for the Booth-Kelly Company?

A. Yes.

Q. Do you recall the instance of taking up a timber claim there?

A. I do.

Q. At that time you were living at home with your parents?

A. I was.

Q. Who took you out to see the timber claim?

A. Mr. Dunbar.

Q. How long did it take you to go out there?

A. One day.

Q. How long after you had gone to see the claim was it before you filed on the land?

A. I think we went the next day probably,—a day or two anyway.

Q. Do you have any recollection about it?

A. Yes, I recall,—I think it was the day after that or probably two days.

Q. Who accompanied you to Roseburg?

A. My sister Ethel and Mr. Dunbar.

Q. Harry Dunbar?

A. Yes sir.

Q. Did Mr. Thomas Roach file at the same time?

A. No, he did not.

Q. Where did you go from to go to Roseburg?

A. I went from Saginaw, because it was from Saginaw that I went up and took a timber claim. I went right from Saginaw to Roseburg to file on it.

Q. Did your sister visit her claim at the same time?

A. Yes.

Q. With Mr. Dunbar also?

A. Yes sir.

Q. Then you all later went to Roseburg to file?

A. Yes sir.

Q. Did you go to visit the claim again after you

had filed?

A. No sir.

Q. Was that the only time you were there?

A. Yes sir.

Q. How did you come to take up a claim?

A. My sister Ethel notified me that we could take up a claim. She knew that I would like to do so,—that is how I came to take up a claim.

Q. Did you have any conversation with anybody else about it before you went to look at the land?

A. No, sir.

Q. Well, how did you happen to have Mr. Dunbar come out there?

A. I really cannot say.

Q. You had nothing to do with securing him to go out?

A. No, sir.

Q. And do you recall anything about publishing notice of final proof?

A. Yes, it was published.

Q. Did you have anything to do with that?

A. I do not recall,—I do not know.

Q. Do you know who attended to it?

A. I think Mr. Booth did.

Q. Mr. Robert Booth?

A. Yes.

Q. How did he happen to attend to that?

A. Well, I suppose he did, I think he was the first to tell my sister that he knew where she could get some land, and she had spoken to me about taking up a timber claim.

Q. You assume that you do not know?

A. No, I do not know—I cannot swear to it, but I think so.

Q. Do you know how you came to go to Roseburg to make your final proof,—how you ascertained the time to go?

A. I suppose I was notified, but I do not know who notified me.

Q. Who went with you?

A. Mr. Dunbar, Ethel and myself.

Q. Anybody else?

A. I do not recall.

Q. Was your sister one of your witnesses?

A. Yes, and Mr. Brumbaugh, I think.

Q. Well, did Mr. Brumbaugh go down to Roseburg when you went down?

A. I do not know.

Q. He showed up all right?

A. He was one of our witnesses.

Q. Was Mr. Dunbar one of your witnesses?

A. Yes.

Q. You say he was one of the witnesses?

A. Yes.

Q. Was Mr. Dunbar also a witness for your sister?

A. He was.

Q. Were you two young ladies witnesses for Mr. Dunbar?

A. Yes.

Q. What makes you think Mr. Brumbaugh was a witness?

A. Well, I do not recollect, he was our cruiser, I

do not know whether he was a witness or not.

Q. You only have to have two witnesses?

A. I do not know.

Q. You do not recall much of the details?

A. No.

Q. Well who paid your expenses down?

A. My father furnished some of the money, and Mr. Booth the other. He said he would advance the money to us, which he did.

Q. What quantity of the money did your father furnish?

A. I do not recall whether it was half, I do not recollect.

Q. Do you recall how much he furnished?

A. Something like twenty or thirty dollars.

Q. Did you repay that to him?

A. Yes.

Q. When did he furnish that, before you went down, or when you went down to make the proof?

A. I say I cannot tell whether it was when I went down to file, or when I went down to prove up.

Q. Do you recall publishing the notice?

A. I did not pay that.

Q. You did not pay any part of the purchase money for the land? That is of the two dollars and fifty cents an acre to pay for the land?

A. No.

Q. Did you have that money yourself? Or did Mr. Booth furnish it to you?

A. He furnished it.

Q. How, in currency, gold or a check?

A. I do not know,—I do not recall.

Q. Do you recall carrying any money down there with you?

A. No, sir I do not. Whether I paid that money over, I cannot say.

Q. Do not you remember that Mr. Dunbar had a draft?

A. Mr. Dunbar was there, but whether I paid the money myself, or Mr. Dunbar, I do not know.

Q. Any way he came there the day that you proved up?

A. Yes.

Q. Now, how long after you had made the proof was it before you deeded the land to the Booth-Kelly Company, or to Mr. Booth or whoever you did deed it to?

A. I do not know. I cannot recall when the deed was made out.

Q. Was it a short time?

A. I cannot recall.

Q. Do you remember making any deed at all?

A. Yes sir.

Q. Do you remember making more than one deed?

A. Yes, I know when the last deed was made, I do not recall the first.

Q. When was the last deed made?

A. That was made in 1907.

Q. In 1907?

A. Yes in September I think.

Q. What was the purpose of making two deeds?

A. Well, I do not know anything concerning that

Q. You know there were two deeds?

A. Yes there were two deeds.

Q. How much money did Mr. Booth give you when you made the first deed?

A. I do not know, I do not remember. I do not know whether I got any when I made the first deed.

Q. Did you not get \$100.00?

A. I got \$100.00 some time along about that time. I do not just recall when.

Q. Well in the neighborhood of the time when you got the \$100.00, you gave a deed?

A. Yes.

Q. How long was it after you made that deed before Mr. Booth returned it to you?

A. I do not recall.

Q. About a year or a year and a half?

A. I would not like to state because I do not recall.

Q. Well it was some time related to the land fraud agitation that was done was not it?

A. It might have been.

Q. Do not you recall that that deed had some relation to that matter?

A. Yes.

Q. You do not know whether or not that deed was ever recorded?

A. No, I do not.

Q. Who was it made out before? Do you remember if Mr. Harry Dunbar was connected with the execution of that deed? Was he the Notary Public

A. I cannot tell you?

Q. Where did you make it,—did you go to the of-

fice of the company?

A. I do not remember about being at the office of the company.

Q. Was the deed sent out to where you were living at that time?

A. I recall that the deed was sent to me.

Q. You were living with your father and mother?

A. Yes.

Q. Where were you living then?

A. I was living out from Roseburg about twelve miles.

Q. Then would you have gone to Roseburg to execute the deed?

A. Yes.

Q. Do you remember seeing Henry Booth in connection with it?

A. I recall now.

Q. Was it Henry Booth that gave you the \$100.00, or Mr. Robert Booth?

A. I think it was Robert Booth, Mr. R. A. Booth.

Q. Did he send that along with the deed, or had you gotten it some time before?

A. I cannot say.

Q. Now, were you living down here at this place twelve miles from Roseburg at the time you gave the deed?

A. Yes.

Q. You came up from there to Saginaw to where your sister was?

A. Yes.

Q. Who asked you to come up there to look at the

land?

A. My sister.

Q. Did she write to you or phone you?

A. She phoned me.

Q. Did you see Henry Booth at that time?

A. No. I would not come to Roseburg there was a nearer Station called Wilbur.

Q. Did you understand that you were to get this \$100.00 before you came up there?

A. No, I did not.

Q. What did you suppose you were going to get?

A. Well, I supposed that the money would be furnished me because I was not at that time able to take a claim and I had to get some one to furnish the money, and Mr. Booth furnished the money as he had done before.

Q. Had you taken a claim before?

A. No.

Q. And did you call upon him to help you?

A. That was about it.

Q. How long was it after that that you knew that you were going to get \$100.00?

A. Well, there was no exact sum said about the timber claim.

Q. There was not?

A. No.

Q. You did expect to get something from Mr. Booth for the claim?

A. I knew that he was to advance me the money to pay for the claim.

Q. This \$100.00 was in addition to what you needed to pay for the claim?

A. Yes, I got \$100.00.

Counsel for the government offers in evidence a certified copy of the deed referred to, and the same is received and marked Government's Exhibit "G" and is in words and figures as follows:

### WARRANTY DEED

THIS INDENTURE, WITNESSETH: That Lucy LaRaut, unmarried, for and in consideration of the sum of Ten (\$10.00) Dollars to her paid does hereby bargain, sell and convey, unto the Booth-Kelly Lumber Company, a corporation, the following described premises, to-wit:

Lots One (1), Two (2), Seven (7), and Eight (8), being the Northwest ( $NE\frac{1}{4}$ ) quarter of Section Twenty-Eight (28), township twenty-one (21), South of Range Two (2), West of the Willamette Meridian, situated in Lane County, Oregon, and containing One Hundred Sixty-Two and eighty-two hundredths (162.82) acres more or less.

TO HAVE AND TO HOLD, the said premises, with their appurtenances unto the said The Booth-Kelly Lumber Company, its successors and assigns, forever. And the said Lucy LaRaut does hereby covenant to and with the said The Booth-Kelly Lumber Company, its successors and assigns, that she is the owner in fee simple of said premises, and that they are free from all incumbrances and that she will warrant and defend the same from all lawful claims whatsoever.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 6th day of September, A. D. 1907.

LUCY LA RAUT. [Seal]

Done in the presence of:

J. A. GRIFFIN.

H. A. DUNBAR.

State of Oregon,

County of Lane,—ss.

On this the 6th day of September A. D. 1907, personally came before me, a Notary Public in and for said county the within named Lucy LaRaut to me personally know to be the identical person described in, and who executed the within instrument, and acknowledged to me that she executed the same freely and voluntarily for the purposes therein named. .

WITNESS my hand and seal this 6th day of September, A. D. 1907.

[Notarial Seal.]

H. A. DUNBAR,

Notary Public for Oregon.

Filed for record Sept. 7, 1907, at 8 A. M.

E. U. LEE,

County Clerk.

By.....Deputy.

STATE OF OREGON,

County of Lane—ss.

I, E. U. Lee, County Clerk, and Ex-Officio Recorder of conveyances in and for Lane County, State of Oregon, do hereby certify that I have compared the foregoing copy of Warranty Deed with the original, and that the same is a correct transcript therefrom, and of the whole of said original warranty deed as the

same appears of record at page 291, Book No. 71, Lane County Deed Records, now in my official care and custody.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the County Court in and for Lane County, State of Oregon, this 6th day of December, 1910.

[Seal.]

E. U. LEE,

County Clerk and Ex-Officio Recorder of Conveyances in and for Lane County, Oregon.

Cross-Examination.

(Questions by Mr. A. H. TANNER.)

Q. You say that Robert Booth is your brother-in-law.

A. Yes, sir.

Q. And he has helped you along from time to time has not he for some years?

A. Yes he has.

Q. And he did that before you took this timber claim?

A. Yes, sir.

Q. And you say that Ethel told you that you could get a timber claim?

A. She did.

Q. You had told her that you would like to take a timber claim?

A. Sure.

Q. You knew that you were entitled to take a timber claim, and you would like to exercise your right to take a timber claim?

A. Yes, sir.

Q. And you went out to look at this land with a view of taking a claim?

A. Yes sir.

Q. And you did go up and file on it?

A. I did.

Q. Now, prior to the time you filed on it, had you had any talk or conversation with Mr. Booth about it at all?

A. No one except my sister.

Q. Your sister Ethel?

A. Yes sir.

Q. And you say that your father advanced you the money to pay part of the final fees?

A. Yes. I do not know whether it was for filing or proving up.

Q. It was expenses and so on?

A. Yes sir.

Q. And you used the money to pay the expenses of filing on the land?

A. I do not know whether it was for filing, or proving up, I cannot say that really.

Q. Now, did you have any talk with Robert Booth yourself about advancing money to pay for the land after you had filed on it?

A. No.

Q. Whom did you talk to?

A. My sister. She said he had advanced the money for her and would do the same by me if I wanted to secure a claim.

Q. How were you to secure him for this money that he advanced,—what was said about giving any

security for the money that he advanced to enable you to pay for the claims. Were you to deed the land to him, as security or anything of that kind,—what was the understanding about that?

A. I guess that is right, that is the first deed.

Q. Was that when the first deed was given?

A. Yes that is right.

Q. That was to secure him for money that he had advanced to pay for the land was not it?

A. Yes sir.

Q. You say you do not recall the date of that deed.

A. No, I do not recall the date of the first deed.

Q. Now, after you had your timber claim you got some more money since from Mr. Booth.

A. I have, yes, besides the \$100.00.

Q. Besides the \$100.00?

A. Yes.

Q. And you have received money from him from time to time?

A. Yes.

Q. And you expect some more money out of the timber claim?

A. Yes I do.

Q. Was any money paid at all when this first deed was made?

A. I cannot recall.

Q. As a matter of fact that first deed was made as a mortgage was not it to secure the money that was advanced.

A. Yes sir.

Q. As you have already stated?

A. Yes sir.

Q. At whose request was it that you made the second deed? Was it at the request of Mr. Booth?

A. Yes, sir. Because I was really depending on Mr. Booth to do what he could for me.

Q. Was that to continue the same arrangement as security for advances that he had made? There was no settlement or payment of balance at that time was there?

A. No.

Q. And this deed was made simply at his request to continue the same arrangement?

A. Yes.

Q. As security for money that he advanced, or would advance to you until such time as the land could be sold and you could get your money out of it?

A. Yes.

Q. Is not that the fact?

A. That is right.

Q. As a matter of fact, you are still the owner of the land are not you?

A. I am.

Q. And this deed is simply held as a mortgage to secure them for advances that they have made and were to make to you?

A. Yes.

Q. Now, at the time you filed on your claim, did you take it for the purpose of making what you could out of it for yourself and for your own benefit?

A. Certainly.

Q. Did you take the claim for the purpose of sell-

ing it when you saw fit? And for what you could get out of it for yourself?

A. I did.

Q. Did you prior to filing on your claim promise anybody, Mr. Booth, or anybody else, to sell it to them, or deed it to them?

A. No, sir.

Q. Did you understand at the time you filed on the claim, that you were taking it for the benefit of yourself, or for the benefit of some one else?

A. For myself.

Q. Had you made any contract or signed any paper or made any agreement whatever before you took the claim, or before you proved up on it to sell it to anybody else?

A. No sir.

Q. Or to sell any interest in it, or the timber thereon?

A. Only this way,—No, I had not made any contract or anything like that.

Q. You had not agreed to sell either the land or the timber had you?

A. No, I had not agreed to do it,—no.

Q. Was any other person or corporation interested in any way whatever in the taking of that claim?

A. No sir.

Q. Now, in going to Roseburg, and in looking after you out there to select the land Mr. Brumbaugh was acting for you and you were depending on him to show you where the land was? Were not you?

A. I was.

Q. And Harry Dunbar acted for you in going to Roseburg and filing and paying the money, and so?

A. Yes, but I cannot recall whether I paid it, or whether Harry did. I do not know. I can't say.

Q. You had made arrangements with Mr. Booth to get the money for that before that time?

A. Yes.

Q. That is before you went up to prove up on it?

A. Yes.

Q. But just how the money was to be provided you did not know?

A. I did not know, I could not say.

Q. Is it not a fact that what Mr. Booth did what he did simply in a friendly way as a relative to help you along and help you get the benefit of a timber claim?

A. Yes sir.

Q. If anybody had come along and wanted to buy your claim from you, would you have felt at liberty to sell it?

A. Yes, I suppose I would have talked to Mr. Booth and asked his advice because I was depending on him.

Q. He had no string on it, or any right to demand any deed from you at that time?

A. No.

Q. Except as security for the money that he would advance you?

A. That is all.

## Re-Direct Examination.

(Questions by Mr. JOHN McCOURT.)

Q. You say Mr. Booth had been helping you along financially prior to that time,—in what way and to what extent?

A. Well, he had given me money at different times.

Q. For what purpose?

A. I do not recall for what purpose.

Q. Just small sums?

A. Yes.

Q. Did you ever keep any account of them since that time or were they just mere gratuitous on his part?

A. That was all.

Q. How long had you been yearning for a timber claim?

A. I cannot say as to that.

Q. What efforts had you made prior to that to get a timber claim?

A. I cannot say that I had ever made any great effort, but I had expressed a wish to my sister and she being in the employ of the Booth-Kelly Company had told me that she would notify me when she found she could get a claim.

Q. Did you try to make any selection, or did you take a claim that some one showed you?

A. I was depending on Mr. Booth. I did not think he would show me a claim that did not amount to anything.

Q. You did not know how much timber you got

on your claim or anything about it?

A. I do not know.

Q. Did you ever go back to it?

A. No.

Q. Did you ever try to sell it? In your life?

A. No.

Q. Never paid any attention to it since you took it up?

A. No, from the simple reason that it was the understanding that the company has claims up there near mine and it was the understanding that if they sold their claims, my claim was to go with theirs.

Q. Did you put your claim in?

A. No.

Q. Did you pay any taxes on it?

A. No.

Q. Do you know who has been paying those taxes?

A. No, I do not.

Q. Do not know anything about that?

A. No.

Q. Did Mr. Booth pay you that \$100.00, before you executed that first deed?

A. I do not recall about that \$100.00.

Q. You had \$100.00 some where about the time you got that deed,—as a matter of fact it was some time before, was it not?

A. I do not recall.

Q. You had not talked about the \$100.00, or agreed about the money that you were to get?

A. No.

Q. When was it that you got some more money?

A. I should judge about two years ago.

Q. In the meantime, however, you had received no more money?

A. No.

Q. How did you happen to get more money at that time?

A. I suppose I asked for it, was the reason that I got it.

Q. That was somewhere about the time Mr. Booth was having his trial down here was not it?

A. Really I cannot say, because I do not remember.

Q. You recollect that Mr. Booth had a trial down here?

A. Yes.

Q. And it was a short time after that, or at that time that you made the second deed?

A. Yes.

Q. Quite awhile after it? about a year after?

A. I cannot say for sure.

Q. What did you do with the first deed?

A. It was destroyed.

Q. And Between the time it was destroyed and the time the second deed was made, Mr. Booth had no writing from you in regard to this land?

A. No.

Q. How much did Mr. Booth give you at the time you made this second arrangement about two years ago? The second time you got the money?

A. I think it was twenty-five dollars.

Q. Twenty-five dollars?

A. Yes.

Q. That is all you have gotten since?

A. Yes.

Q. And all you have gotten is \$125.00?

A. Yes.

Q. Do you recall that your sister gave a deed the same time as you deeded yours?

A. I cannot say.

Q. And who did you convey this land to the first time?

A. Answer I cannot say whether that was made to Mr. Booth or to the Booth-Kelly Company.

Q. To whom was the second deed made?

A. To the Booth-Kelly Company.

Q. The Booth-Kelly Lumber Company had not loaned you any money?

A. I do not know anything about that.

Q. Your negotiations were all with Robert Booth?

A. Yes.

Q. Did you ever have any negotiations with John Kelly?

A. No sir.

Q. You did not talk to him, did not know him in the transaction?

A. No I did not know John Kelly in the transaction.

Q. He never loaned you any money?

A. No.

Q. Nor the Booth-Kelly Lumber Company did not loan you any money.

A. No.

Q. As you understood the first deed was made to the Booth-Kelly Company was not it?

A. I do not remember.

Q. Well, when that four hundred dollars was brought down there to Roseburg you do not know whether Robert Booth sent it down there, or whether the Booth-Kelly Lumber Company sent it down?

A. I do not know, I do not recall that.

Q. As a matter of fact, all the money that had been advanced you in connection with the claim,—the hundred dollars and all, came from the Booth-Kelly Company did not it?

A. I do not know where it came from. I got it through Mr. Booth.

Q. You got it from Robert Booth?

A. Yes sir.

Q. You did not get the four hundred dollars to pay the purchase price of the land from Mr. Booth, did you?

A. I thought I did.

Q. Harry Dunbar, the bookkeeper for the Booth-Kelly Company paid it?

A. He brought it to me, but it was supposed to be from Mr. Booth, that was my understanding.

Q. How did you know how much money Mr. Booth supplied you?

A. I do not understand you.

Q. Well, how much money did he advance you? You say that this deed was made because he had advanced you money,—now how much money did he

advance you?

A. Well, the hundred dollars. I think that was all until after the second deed was made.

Q. Did not he pay the four hundred dollars?

A. Sure, and expenses.

Q. You do not know what they were?

A. Well, I do not know that I do know the exact amount.

Q. You did not try to find out?

A. I cannot say that I did.

Q. Did you look over this timber claim and make any effort to pick out any particular claim, or did you take the one that you were shown first?

A. I cannot say as to that. I know we went over three or two claims,—went over mine and my sister's.

Q. Did you know which was yours when you were going over them?

A. Yes.

Q. Do you know that yours had only about half as much timber on it as any of the rest of them?

A. No, I do not. I do not know that yet.

Q. How old were you at that time, Miss LaRaut?

A. How many years ago was that?

Q. That was in 1902, eight years ago.

A. Eight years ago I was about twenty-six or twenty-seven it makes me awful old now.

Q. That is near enough. I want to see how long you had been trying to get a timber claim. Do you know that your brother and sister-in-law all gave deeds about the same time that you did in a similar manner that you did?

A. I cannot say anything about that. I think they did, but I cannot say.

Q. Were you present when your sister got her hundred dollars?

A. I cannot say anything about that. We were not in the same place. I was at home, and she was elsewhere.

Q. Well, how, you did not give Mr. Booth any note or anything for this money?

A. I did not.

Q. Never had any statement of account of the money at all?

A. No, sir.

Q. Did you take any writing back from him that he would hold this land for you, or that the Booth-Kelly Company would?

A. No, sir.

Q. Nothing of that kind?

A. No.

Q. And the first conversation that you had after you gave that original deed about getting any more money was about two years ago, when you got twenty-five dollars more?

A. Yes.

Q. You never made any effort to sell this claim to any one?

A. No sir.

Q. To Mr. Robert Booth, or any one else?

A. No, sir.

Q. Never discussed the value of the claim?

A. We have talked about the matter, frequently

since.

Q. In the last two years?

A. Yes.

Q. But between the times you proved up on this land, until about two years ago, you never talked about it?

A. We may have, I cannot say.

Q. Your sister, Mrs. Robert Smith, of Grants Pass—did you ever talk with her about it?

A. In what way do you mean?

Q. That is as to the details of the transaction?

A. Yes.

#### Re-Cross Examination.

(Questions by Mr. A. H. TANNER.)

Q. Had the payment of the hundred dollars or the making of the first deed any relation to each other? Or was the money simply paid along as you needed it at that time,—that is, was the deed in consideration of the hundred dollars or anything of that kind?

A. No, I cannot say that it was.

Q. And you do not recall whether the deed was made before the hundred dollars was paid, or after wards?

A. I cannot say.

Q. Now, you knew at the time that you talked about dealing with Mr. Booth, that he was manager of the Booth-Kelly Co. did you not?

A. Yes, sir.

Q. And at that time you had every confidence in Mr. Booth and trusted to him, and took his advice about the matter of this claim, and left it to him to sell it to the best advantage for your benefit did you not?

A. Yes, I did.

Q. And is it not a fact, that you never have had a settlement, even to this day, as to the balance that is due you for your claim, or what should become of your interest?

A. No, sir.

Q. Have you talked to or with Mr. Booth in the last year or two about selling your claim, and has he kept you advised more or less about the prospects of selling it, or of disposing of it?

A. If they sell their land mine is to go with it.

Q. You have talked to him about the matter of selling it in that way along with the other lands of the company?

A. Yes sir.

Further Direct Examination.

(Questions by Mr. JOHN McCOURT.)

Q. How was that hundred dollars paid?

A. How do you mean?

Q. Was it paid in gold or currency?

A. I do not recall.

Q. Was not it paid by check on the Booth-Kelly Company?

A. I could not say.

Q. Where were you when you received it?

A. I suppose I was home on the farm.

Q. Do not you recall now?

A. No, I do not.

Q. Did you put the money in the bank when you got it?

A. I cannot say. I think I gave it to my father, and he paid me interest on it.

Q. Were you paying Mr. Booth any interest for it?

A. No, sir.

Q. Mr. Booth just let you have that money, and you put it down on interest,—you did not need the money?

A. Well, I could have used it I suppose, if I had wished to.

Q. How did you happen to be getting a loan from Mr. Booth when you did not need the money? If that was all you were getting?

(Witness does not answer).

Q. Did you answer that question?

A. No I did not.

Q. Can you answer it?

A. I cannot say that I can.

Q. The fact of the matter is, is it not, that the hundred dollars was all that you were to get for it and that you so understood it?

A. No, sir.

Q. How is it that you did not get any more money from Mr. Booth, since that time on this timber claim?

A. I have.

Q. How much?

A. Twenty-five dollars.

Q. What did you do with that?

A. I used it.

Q. You did not need any money between that time and the time you got the twenty-five dollars?

A. Sure, I was at home with my parents, my father was keeping it.

Q. You did not get any more money from Mr. Booth, did you?

A. No sir.

Q. He gave you back your deed?

A. Yes sir.

Q. Did you pay him back his money?

A. No.

Q. You let the matter stand as it was?

A. Yes.

Q. You had no evidence of the transaction between him and you until 1907, when you made the new deed?

A. I do not know just what you mean.

Q. I say between the time when he handed you back the first deed, and you destroyed it, you had no evidence of the transaction between yourself and himself until 1907, when you gave him another deed?

A. No.

Q. He did not give you any more money when you gave him the new deed?

A. I cannot say that he did.

Q. Then about a year, or a year and a half after that he gave you twenty-five dollars more in connection with that transaction?

A. Yes

Q. You say he has been advising with you about this land in the last year or two?

A. Yes.

Q. Has he ever told you what the land was worth?

A. Well, I suppose so, I do not know whether he knew just exactly what the land was worth.

Q. I ask you if he told you?

A. No.

Q. Has any one connected with the Booth-Kelly Lumber Company ever told you?

A. No.

Q. Have you exercised any control over it?

A. No.

Q. You never have since the execution of the first deed?

A. No.

Q. You and Mr. Booth are good friends you say?

A. Yes.

Q. You counselled with him and advised with him and have great confidence in his advice?

A. Yes, sure.

(Witness excused).

Ethel Lewis is called as a witness for the government, and being first duly sworn testifies as follows:

Direct Examination.

(Questions by Mr. JOHN McCOURT.)

Q. You are a sister of this lady that was just on the witness stand?

A. Yes.

Q. You are older than she?

A. Yes sir.

Q. Do you remember the incident of taking a timber claim in 1902?

A. Yes sir.

Q. Where were you living at that time?

A. Saginaw.

Q. And what were you doing?

A. I was post-mistress.

Q. Post-mistress at Saginaw?

A. Yes sir.

Q. Whom did you live with at that time?

A. I boarded with my brother.

Q. Mr. Stephen La Raut?

A. Yes sir.

Q. How long was it before you took up this timber claim mentioned in the papers here that you went to look at the land?

A. What.

Q. Did you go to look at this land? Included in your timber claim?

A. Yes sir.

Q. How long was it before you filed on it?

A. I do not remember.

Q. What is your best impression?

A. A few days after that we filed on the land. I do not remember how long.

Q. Are you sure you went to look at the land before you filed on it?

A. Yes indeed.

Q. You are sure of that?

A. Yes sir.

Q. Now the reason I ask you is that you testified in your final proof that you went to look at the land on the 15th, or 16th.

A. I do not remember the date.

Q. And you filed on the 17th?

A. Yes.

Q. You went to the land with Whom?

A. Mr. Dunbar and my sister and Mr. Brumbaugh.

Q. What was Mr. Brumbaugh?

A. He was the cruiser.

Q. What was Mr. Dunbar doing?

A. He was working for the Booth-Kelly Company.

Q. How far was this claim from Saginaw?

A. I do not know.

Q. How did you go from Saginaw to get there?

A. On horseback.

Q. Is it west or east?

A. It is east of Cottage Grove. I guess Cottage Grove is south of Saginaw.

Q. Where did you take a horse from?

A. From Saginaw.

Q. Your whole party rode horseback?

A. Yes, Mr. Brumbaugh, I do not know whether he rode or walked.

Q. How did you determine the claim that you wanted to take—how did you find out the claim?

A. Well, I had spoken to Mr. Booth that I would like to take up a claim. Everybody was taking up claims and I wanted one, if I could get it.

Q. Where was Mr. Booth when you spoke to him?

A. He was in Eugene.

Q. Were you in Eugene at the time you talked

to him?

A. I do not remember, if he was living there then or not. I cannot say.

Q. How long before you started to take up a claim that you talked to him about it?

A. I do not know, we talked about it a good many times.

Q. Did you know Mr. Brumbaugh?

A. Not until then.

Q. How did Mr. Brumbaugh happen to show you the claim, do you know?

A. I do not know that.

Q. You do not know who instructed him to show you the claim?

A. No.

Q. You went right along and looked at the claim that he happened to show you?

A. Yes.

Q. Now, who was in the party that went to Roseburg to file?

A. Mr. Dunbar, my sister, Miss La Raut, and myself.

Q. At these conversations or any of them that you had with Mr. Booth what statement did he make to you with regard to your taking a timber claim,—what did he say that he would do?

A. He said if I wanted to take up a claim there was a chance for me to get a timber claim in there and that he would advance me all the money I wanted to do it, and of course, when the claim was sold, I could pay him back the money.

Q. Who attended to details in getting that claim ready for proof if you know?

A. Attended to the details?

Q. Yes, getting the notice published?

A. Mr. Booth, I depended on him for everything.

Q. Did you see him after you went to the claim?

A. I do not know.

Q. Did you notify him that you had filed.

A. I do not remember that I did.

Q. How do you suppose he found out. If you did not tell him?

A. I do not know that.

Q. Mr. Harry Dunbar filed at the same time did he not?

A. No.

Q. Did not he?

A. I do not think he did.

Q. Did not Mr. Dunbar, you and your sister go down to Roseburg?

A. Yes, he went with us, but he did not file.

Q. He went along?

A. Yes.

Q. He was bookkeeper for the company?

A. He was working for the Booth-Kelly Company.

Q. Did Mr. Booth say anything about sending him with you?

A. He didn't say. He went with us anyhow.

Q. Now, when you went to the land, Mr. Dunbar went along too?

A. Yes.

Q. And Mr. Brumbaugh was an employe of the company?

A. Yes.

Q. When you went to make proof he went along-

A. I do not remember.

Q. And Mr. Dunbar?

A. I do not remember whether Mr. Dunbar was there or not.

Q. Do you remember Mr. Brumbaugh being there?

A. I do not remember.

Q. You do not recall that they were there?

A. No.

Q. Now who furnished, or who gave you the money to pay for the land?

A. Mr. Booth furnished it I suppose.

Q. How did you get it into your possession when you got down there?

A. I do not know whether I had it in my possession or not. I do not know whether it was handed to me when I went to Roseburg, or whether some one else sent it to me, or handed it to me.

Q. Do not recollect anything about it?

A. No.

Q. You do not recall Mr. Dunbar being there.

A. He might have been there.

Q. Do you know whether he was one of your witnesses?

A. Yes, he was one of my witnesses.

Q. Mr. Dunbar.

A. Yes.

Q. And Was not Mr. Brumbaugh?

A. I do not remember.

Q. Do you remember whether you had more than one witness or not?

A. I remember Mr. Dunbar.

Q. Well, who paid your expenses down there and back?

A. Mr. Booth, I suppose, he furnished all the money.

Q. How did you get the money?

A. Perhaps he gave it to Harry Dunbar.

Q. Do you recall who bought your ticket when you took the train?

A. No.

Q. Where did you take the train.

A. I do not remember, whether I took the train from Eugene or from Saginaw.

Q. And did you have to stay all night at Roseburg?

A. Yes,—or did we.

Q. Who bought your ticket out of Roseburg?

A. I suppose Mr. Dunbar did.

Q. At any rate, some one was attending to all those matters of details?

A. The money was all furnished for all those things by Mr. Booth.

Q. By Mr. Booth?

A. Yes.

Q. Mr. Robert Booth?

A. Yes.

Q. Do you remember whether you stopped at the

hotel in Roseburg or not?

A. Yes, sir, I stopped at the hotel.

Q. What hotel?

A. The McClelland House.

Q. Did Mr. Dunbar pay your hotel bill?

A. I do not remember that.

Q. You do not have any recollection of paying it yourself?

A. I did not have any reason for doing it myself.

Q. How long after you got back from Roseburg was it that you made a deed conveying this land?

A. I do not remember that.

Q. Who did you convey the land to?

A. I do not recollect.

Q. Who did you make the deed to?

A. I do not recollect whether it was Mr. Booth or the company.

Q. Did you ever get a patent to your land?

A. Yes,—I did not personally, no.

Q. Who did?

A. I do not know, I suppose there was a patent issued.

Q. Do you know anything about it,—who got it, or anything about that?

A. No.

Q. You never got it?

A. No.

Q. Do you know who did?

A. No.

Q. Did you have any conversation with John Kelly in connection with the matter?

A. No.

Q. Now about how long was it after you made proof was it that you deeded the land to Mr. Booth or to the company?

A. I do not know that.

Q. Did he pay you the hundred dollars about that time?

A. I do not remember when he paid me the hundred dollars.

Q. It was somewhere in relation to that time?

A. I do not know.

Q. How did he pay the hundred dollars?

A. I do not remember that either.

Q. By check?

A. I do not remember whether it was a check or money.

Q. Did he give it to you personally?

A. I do not know whether it was handed to me personally, or whether it was sent to me.

Q. At any rate, it came from Mr. Booth, as you so understood it?

A. Yes.

Q. How long was it after that that Mr. Booth gave that deed back to you?

A. I do not remember.

Q. About how long?

A. I do not know,—I have no idea.

Q. Do you recall that it was somewhere in relation to the time of the land fraud agitation?

A. I do not recall.

Q. This deed was delivered to you somewhere in

relation to that episode?

A. I do not remember?

Q. Was it not?

A. I do not remember.

Q. What explanation did Mr. Booth make to you when he came and handed you back that deed?

A. I do not know,—I do not remember.

Q. Did he make any?

A. I do not remember whether he did or not.

Q. Did he hand it to you personally?

A. I do not remember.

Q. You do not know how you got that deed?

A. No.

Q. What did you do with it when you got it?

A. I do not know what I did with it.

Q. Did you destroy it?

A. No.

Q. You do not know whether you destroyed it or not?

A. No, I do not.

Q. Have you ever looked for it since?

A. I think it was destroyed. I do not know whether it was destroyed, I would not say,—I do not remember.

Q. You intended to destroy it, did not you?

A. I do not know whether I did or not, I do not know why I would destroy it.

Q. Why was it given back to you?

A. I do not know.

Q. What did you say?

A. I do not know. I depended for everything

upon Mr. Booth.

Q. When he came and handed it back to you, you took it without any question?

A. I do not know whether he handed it to me or not.

Q. How did you happen to execute another deed in 1907?

A. The same as the first, one for security.

Q. Security for what?

A. Security for money.

Q. What money was it security for?

A. The amount paid for this land, this timber claim.

Q. Security for the timber claim? The timber claim was yours?

A. Sure, but Mr. Booth furnished all the money.

Q. How much money did he furnish?

A. I do not know what the expenses were for all these different things, I have not any idea.

Q. How did you happen to make a deed to the Booth-Kelly Lumber Company for money that Mr. Booth furnished?

A. I do not know anything about that, I trusted to Mr. Booth for that.

Q. Did you ever pay any taxes on that land?

A. Not personally. Those taxes were all paid.

Q. How did you know they were.

A. I trusted to Mr. Booth.

Q. You trusted to Mr. Booth?

A. I did.

Q. Do you know whether he paid them in his

name, or in yours?

A. I do not know that.

Q. How much money had you had when you gave this deed for security?

A. I do not know whether I had any money.

Q. What was it to secure? If you had no money?

A. He had furnished all the money, he had to have something for security.

Q. How much money had he furnished for which you gave him the deed as security?

A. I do not know.

Q. You gave the deed without knowing how much he claimed that he had furnished?

A. Certainly.

Q. You never asked him how much he had furnished?

A. I never asked him anything about it.

Q. Never asked him to let you have any more money?

A. No.

Q. What did you want a timber claim for anyway?

A. Why to make money out of it.

Q. You have not made very much money out of this one have you?

A. Not yet, but I hope to.

Q. How much is it worth?

A. I do not know.

Q. Did you inquire what it was worth, or ever try to sell it to anybody, and have you no idea what it is worth?

A. I have not the slightest idea.

Q. You were not very anxious about the value of it?

A. Certainly I was.

Q. You were not interested enough to ask?

A. I depended on him.

Q. I know you depended on him, but you never asked what it was worth?

A. No.

Q. You never asked if your claim was worth one thousand dollars or ten thousand dollars?

A. No.

Q. Yet you took up a timber claim because you wanted to make money out of it.

A. Sure.

Q. Did Mr. Booth ever pay you any more money than that one hundred dollars?

A. Yes.

Q. When?

A. I do not know when it was, just when.

Q. About when?

A. I do not just remember when he paid it.

Q. How much was it?

A. Twenty-five dollars.

Q. Twenty-five dollars?

A. Yes.

Q. What did he pay it for?

A. Because I wanted it.

Q. How did it happen that you wanted just that sum of money?

A. I do not know that—I do not know whether

there was any certain sum of money.

Q. You wanted twenty-five dollars.

A. I did not say that I wanted Twenty-five dollars.

Q. That is what he gave you?

A. I asked for money and he gave me twenty-five dollars.

Q. Did you tell Mr. Booth how much you wanted?

A. No.

Q. How did he happen to give it to you?

A. I just told you.

Q. You asked him for money and he loaned you twenty-five dollars?

A. I asked for money and he gave it to me.

Q. Nothing was said about this timber claim?

A. No.

Q. You have never been up to that timber claim since that?

A. No.

Q. Never exercised any control of any character over it? Since that at any time?

A. No.

Q. Do you know where it was that you made out that first deed?

A. No.

Q. Or who was present?

A. No.

Q. Do you know where you were when you made out the second one?

A. No, I do not remember that.

Q. Do you remember whether your sister was present when you made it out?

A. No, I do not.

Q. Where does Mr. Lewis work?

A. For the Booth-Kelly Company.

Q. How long has he been working for the Booth-Kelly Company?

A. I do not know.

Q. Do you remember whether your sister and you were together at the time you made out the second deed?

A. No, I do not remember.

Q. Do you recall where it was that you made out that deed?

A. No.

Q. You are living at Eugene now?

A. I live at Eugene.

Q. You were living there at the time you made out that deed were you not?

A. I do not remember.

Q. Do not you have any recollection of making that second deed at all?

A. No, I do not remember.

Q. Do you know that you ever made a second deed?

A. Well, I think I did.

Q. What did you say?

A. I think I did.

Q. In what capacity does your husband work for the Booth-Kelly Company?

A. Sales manager.

Q. Do you mean to say now Mrs. Lewis, that you have no more definite recollection about this matter? That you do not remember when you made this deed?

A. No, I do not.

Q. You do not remember how much Mr. Booth had loaned you or advanced you?

A. No.

Q. You have never made any effort to sell the claim?

A. No.

Q. Do not you know that that claim is worth between eight and ten thousand dollars?

A. No.

Q. Have not the least idea?

A. No.

Q. You never have inquired about it? Or taken the faintest interest in it?

A. I never have, because when that timber is sold, or when their timber is sold, they are to give me so much for it.

Q. When did they tell you that?

A. I do not remember.

Q. Who told you that?

A. Mr. Booth.

Q. How long ago?

A. I do not remember.

Q. Was not that about two years ago?

A. I do not remember.

Q. Is it not about two years ago that he told you that about the time he was tried down here and some

question came up about this very claim?

A. I do not remember that at all.

Q. It was a long time after you took the claim up that he told you that?

A. I do not remember.

Q. But you have not taken any further interest in property worth eight or ten thousand dollars belonging to you?

A. No, because when it is sold I will get what it is worth,

Q. When prior to this day did you ever make a claim that you had an equitable lien or claim upon that land?

A. I do not just understand.

Q. Is not today, the first time you have ever made such a claim?

A. I do not understand.

Q. Is not today the first time that you ever made a claim that you gave Mr. Booth, or either of those gentlemen that deed, as a mortgage?

A. No, sir.

Q. When did you ever make that claim?

A. When the deed was made, that it was for security.

Q. Who did you ever tell that to?

A. To Mr. Booth, of course.

Q. Did you ever tell anybody else that?

A. No.

Q. What interest are you paying in on that money that he advanced to you?

A. None.

Q. No interest?

A. No, sir. He is doing that to help me.

Q. Did he pay the taxes to help you?

A. Sure.

Q. What does he get out of it? What would he get out of it?

A. I do not know, whatever the expenses are is what he gets.

Q. He just simply gets his money back?

A. I suppose so.

Q. You suppose so?

A. Yes.

Q. What other property have you besides this timber claim?

A. None.

Q. What other property did you have at the time you took up the timber claim?

A. None.

Q. What property have you had between the time you took up the timber claim and the present time?

A. None.

Q. Were you working for the Booth-Kelly Company at Saginaw at the time you took the claim?

A. Yes sir.

Q. What other property has your sister?

A. None.

Q. What property had your sister at the time she took her claim or since that time, or now?

A. None.

Q. None at all except the timber claim?

A. That is all.

Counsel for the government now offers in evidence a deed from Ethel M. Lewis and husband to the Booth-Kelly Lumber Company, bearing date of September 6th, 1907, and the same is received and filed marked Government's Exhibit "H", and is in words and figures as follows, to-wit:

#### WARRANTY DEED.

THIS INDENTURE WITNESSETH: That Ethel M. Lewis, formerly Ethel M. La Raut, and L. L. Lewis, her husband, for and in consideration of the sum of Ten (\$10) Dollars to them paid do hereby bargain, sell and convey unto the Booth-Kelly Lumber Company, a corporation, the following described premises, to-wit:

Lots Nine (9), Ten (10), Fifteen (15), and Sixteen (16), being the southeast quarter (SE $\frac{1}{4}$ ) of the Section Twenty-eight (28), Township Twenty-one (21), South of Range Two (2), West of the Willamette Meridian, situated in Lane County, Oregon, and containing One Hundred Sixty-two and eight-two hundredths (162.82) acres more or less.

TO HAVE AND TO HOLD the said premises, with their appurtenances, unto the said The Booth-Kelly Lumber Company, its successors and assigns forever. And the said Ethel M. Lewis and L. L. Lewis, do hereby covenant to and with the said The Booth-Kelly Lumber Company, its successors and assigns, that they are to owners in fee simple of said premises, and that they are free from all incumbrances, and that they will warrant and defend the same

from all lawful claims whatsoever.

IN WITNESS WHEREOF, We have hereunto  
set our hands and seals this 6th day of September, A.  
D., 1907.

[Seal.]

ETHEL M. LEWIS.

[Seal.]

L. L. LEWIS.

Done in the presence of:

J. A. Griffin.

H. A. Dunbar.

STATE OF OREGON.

County of Lane—ss.

On this, the 6th day of September, A. D., 1907, personally came before a notary public in and for said county the within named Ethel M. Lewis and L. L. Lewis her husband to me personally known to be the identical persons described in, and who executed the within instrument, and acknowledged to me that they executed the same freely and voluntarily for the purposes therein named.

WITNESS MY hand and seal this 6th day of September, A. D., 1907.

[Notarial Seal.]

H. A. DUNBAR,

Notary Public for Oregon.

Filed for record Sept. 7, 1907, at Eight A. M.

E. U. LEE.

County Clerk,

By Deputy.

STATE OF OREGON.

County of Lane—ss.

I, E. U. Lee, County Clerk, and Ex-Officio Recorder of conveyances in and for Lane County, State of

Oregon, do hereby certify that I have compared the foregoing copy of warranty deed with the original, and that the same is a correct transcript therefrom and of the whole of said original warranty deed as the same appears of record at page 290, Book 71, Lane County Deed Records, now in my official care and custody.

IN WITNESS WHEREOF I have hereunto set my hand and affixed the seal of the County Court in and for Lane County, State of Oregon, this 6th day of December, 1910.

[Seal.]

E. U. LEE,

County Clerk and Ex-Officio Recorder of conveyances in and for Lane County, Oregon.

### Cross Examination.

(Questions by Mr. A. H. TANNER.)

Q. Now, you say that Mr. Robert Booth is your brother-in-law?

A. Yes, sir.

Q. He married a sister of yours?

A. Yes sir.

Q. And he has been accustomed to help you and your sister and other members of the family along, is that correct?

A. Yes, sir.

Q. And you have depended on him more or less for advice and assistance?

A. Always looked to him for advice.

Q. And at all times, you had every confidence in his advice?

A. Every confidence,—he helped me in many ways.

Q. So far as the advancing of this money is concerned you trusted to him to keep account of it and to make a proper settlement for it?

A. Yes, sir.

Q. Now, you say that you broached the subject to Mr. Booth about wanting to take a timber claim yourself?

A. I think I did.

Q. And did you say anything to him about wanting to get a claim for any other members of the family?

A. Yes.

Q. What did you say to him about it?

A. I wanted to know if my sister Lucy could get one, and also in regard to Stephen and Alice La Raut?

Q. What did you say to him about Stephen and Alice La Raut?

A. That they would like to take up a claim. He said he would do the same by them as he had with me.

Q. Did you say anything to him in any of those conversations about yourself and Lucy wanting to become self-supporting and to get the benefit of a timber claim?

A. Yes.

Q. And what was it you say he said about helping you advancing the money to enable you to take a claim and so on?

A. He said he would advance all the money that I needed.

Q. And help you in that way?

A. Help me in that way to get a claim, and when it was sold or milled he would get his money back and I would get what it was worth.

Q. Now, Mr. Brumbaugh and Mr. Dunbar took you up there as you understood that they were doing that at Mr. Booth's suggestion?

A. Yes, sir.

Q. For your benefit?

A. For my benefit.

Q. Now, did you at the time you filed on this claim do so for the purpose of making what you could out of it for yourself and for your own benefit?

A. Yes sir.

Q. Did you take the claim for the purpose of selling it when you saw fit, for what you could get out of it?

A. Yes.

Q. You took the claim that you had a right to take and sell it for what you saw fit?

A. Yes, that is the idea I had.

Q. Had you prior to filing on this claim, promised any body to sell it to them, or to deed it to them?

A. No, sir.

Q. Had you made any agreement of any kind to sell it to any body,—Mr. Booth or any body else?

A. No agreement to sell it to any body.

Q. Had you made any contract? Or signed any paper whatever? Or made any agreement whatever?

Before you made application to purchase the land or before you proved up on it to sell it to anybody else?

A. No, sir.

Q. Or any interest in it?

A. No, sir.

Q. Had you made any agreement to sell any interest in it?

A. No, sir.

Q. Or the timber on it?

A. No, sir.

Q. Was any other person, firm, or corporation interested in any way with you in the taking of this claim?

A. No, sir.

Q. Now, what is the facts as to whether or not this hundred dollars was paid before or after the first deed was made, do you recall about that?

A. I do not recall.

Q. Did the payment of the hundred dollars and the making of the first deed have any relation to each other,—that is was the deed made in consideration of the hundred dollars or anything of that kind?

A. No, sir.

Q. You say the purpose of this deed was what?

A. Security.

Q. You gave Mr. Booth security for the money that he was advancing to you in the matter?

A. Yes, sir.

Q. And the second deed was made in the same way was it?

A. Sure.

Q. For the same purpose?

A. Yes.

Q. And do you still claim to own this land subject to the mortgage to the Booth-Kelly Company?

A. Certainly.

Q. And you have had the right at all times to sell it, if you wanted to?

A. Certainly.

Q. And still claim that right?

A. I still claim that right.

Q. How did Mr. Booth come to pay you the hundred dollars that you just explained?

A. Well, he gave me money many times when I needed it. When I asked him for money, he would have advanced it to me knowing that I needed money. I do not recall.

Q. And the payment of the twenty-five dollars? Was in the same way was it?

A. The same way.

Q. You were depending on him?

A. Yes. That was not all the money that he has ever given me.

Q. You were depending on him to keep account of the money?

A. Certainly.

Q. And when you finally settled up to adjust the matter between you?

A. Certainly.

Q. Has there ever been any settlement as to the balance?

A. No, sir.

Q. Or anything of that kind?

A. No, sir.

Q. State whether you have been advising with Mr. Booth the last year or two about selling your claim, or in regard to your land,—have you had any talk with him about it?

A. About what?

Q. In reference to selling your claim,—about what the prospects was for selling it,—have you talked with Mr. Booth about that matter?

A. No.

Q. You have just depended on him to look after it, and do the best he could for you in the matter, is that the idea?

A. That is the idea.

Q. Now it has been Mr. Booth's method, or purpose, has it not, to give members of the family employment and help them along about giving them employment in the company wherever he could?

A. Yes sir.

Q. And he has been very kind to all of them?

A. Yes, to all of them.

Q. And you have every confidence in him to do what was right by you in relation to your claim?

A. Yes, I would go to him for anything.

Q. How long had you been working for the company there in the store when you took this claim?

A. When did I take it please?

Q. 1902.

A. One year.

Q. About a year?

A. About a year, yes.

Q. How long has your brother Stephen A. La Raut been working there?

A. I do not know, I do not remember when he went there?

Q. Was he there when you went there?

A. Yes, but I do not recall how long before.

Q. How long did you continue after that?

A. I do not remember, but I was there two or three years, I do not remember just when I left there, it has been a good while ago since I came away.

Q. How long did he continue after that?

A. I do not know, he was there when I left.

Q. Did not you continue to work for the company up to about the time you were married?

A. Yes, about a year before.

Q. When were you married?

A. In 1905.

Q. Then you must have continued to work up there until about 1904?

A. Somewhere about that I never figured it up.

Q. Now, when you first broached the subject to Mr. Booth about taking a timber claim for yourself and for other members of the family —your sister Lucy, and Stephen and his wife, did not he tell you that he could not make any bargain if he wanted to buy the land?

A. Sure.

Q. That it would be illegal to do that.

A. Sure.

Q. He explained that all to you?

A. Yes.

Q. He told you that he could not make any contract to purchase the land before you proved up on it?

A. Yes.

Q. But, in order to help you along he would advance the money to enable you to take the claim up?

A. Yes, so we could take advantage of our rights.

Q. Do you know Mrs. Applestone that was on the stand awhile ago?

A. Yes sir.

Q. How long have you know her?

A. Always, I guess.

Q. You have known her from childhood?

A. Yes, from childhood, when my brother married her mother.

Q. She is not related to you in any way?

A. No.

Q. No blood relation?

A. No.

Q. Do you remember her visiting Stephen about the time these claims were taken?

A. Well, of course that was her home—that is she was there part of the time and away part of the time,—of course, I do not remember.

Q. Do you recall whether or not she was there about the time you went up to look at the land and file on the claim?

A. I do not recall no.

Q. You do not recall about that?

A. No.

Q. Did you at any time ever hear her mother or Stephen talking to her about these claims, or about taking a claim?

A. No, I never did.

Q. Did you ever talk to her about it yourself?

A. No.

Q. If her mother or Stephen had talked to her about them, or about the arrangement would you have been apt to have heard it do you suppose?

A. I do not know whether I would or not.

Q. Were you about the house much yourself?

A. No, only for my meals and to sleep.

Q. What was she doing there—just visiting her family?

A. Well, they were her parents, she was there when she was not at any place else.

Re-Direct Examination.

(Questions by Mr. McCOURT.)

Q. Did you get a copy of or rather a form or proof of timber entries, before you went down to prove up from Mr. Booth, or the Booth-Kelly Company written out in questions and answers?

A. I do not remember.

Q. You do not remember that?

A. No.

Q. How much were you getting down there at the store?

A. I got an advance in wages at different times.

Q. Along in 1902 say?

A. I do not remember, somewhere in the neighbor-

hood of twenty-five or thirty dollars.

Q. That was in addition to your compensation as Post-Mistress?

A. No.

Q. That included your post-mistress salary?

A. Yes.

Q. You boarded at home?

A. Yes.

Q. This hundred dollars that you got there, what did you do with it?

A. I do not know what I did with it, I used it.

Q. You did not put it in the bank?

A. No.

Q. How was it paid to you?

A. In a check, or how, I do not remember.

Q. Do not remember that at all?

A. No.

Q. You say Mr. Booth has given you money at other times besides this hundred dollars?

A. Yes a good many times.

Q. How much?

A. I do not remember, he has given me different sums at different times.

Q. They were mere gifts.

A. Mere gifts.

Q. They were not secured by the timber claim?

A. No.

Q. They were considered gifts without any timber claims to secure them with?

A. Sure, he has given me money because he has

helped me a good many times.

Q. He simply gave you the hundred twenty-five dollars?

A. Sure

Q. Was it secured by the timber claim?

A. I gave him a deed for security of the timber claim.

Q. You secured him with a deed?

A. Yes.

Q. What did he give you to show that it was for security?

A. Nothing that I know of.

Q. There was not much use for securing him, if he never gave you anything to show for it?

A. I think so. He has advanced money and I thought I should give him that deed as security.

Q. What had he advanced?

A. The filing fees.

Q. How much was that?

A. I do not know. I do not know as I ever knew.

Q. How much do you think?

A. I do not know.

Q. Have you any idea?

A. No, I have no idea.

Q. Do you think it was as much as one hundred dollars?

A. I do not know. I do not have any idea.

Q. You say you felt as though you could sell that claim to anybody?

A. I could sell it to anybody.

Q. You never tried to?

A. No, I depended on him.

Q. You never asked him to sell it for you?

A. No, but he intended to do so as quick as he could.

Q. He never told you how much it was worth?

A. No.

Q. Or how much you could get for it?

A. No.

Q. The Booth-Kelly Company was buying timber was it not?

A. I do not know anything about that.

Q. How did you expect to sell it while the Booth-Kelly Company had it?

A. If they sold theirs, they were to put mine in.

Q. How did they happen to take a deed to it six or seven years before? Couldn't they have done that without the deed?

A. I do not know.

Q. Wouldn't you feel safer with the title to the property in your own name instead of the Booth-Kelly Company?

A. No.

Q. It was just as secure with the Booth-Kelly Company?

A. Just as secure.

Q. Do you remember that Mrs. LaRaut and Mr. Stephen LaRaut each got one hundred dollars about the same time that you did?

A. No, I do not know anything about that.

Q. Do not you know that they got one hundred dollars each?

A. No.

Q. Do not you know that they got twenty-five dollars, each of them, about the same time that you got yours?

A. No, I do not.

Q. You do not know what arrangement they had about that?

A. No, I do not.

Q. What did Mr. Booth have for security during that year and a half when he didn't have any deed at all?

A. I do not remember when he got his deed.

Q. You remember he gave it back to you,—he returned that first deed?

A. Yes.

Q. Then it was about a year and a half afterwards before you gave him the next deed?

A. I do not remember.

Q. You know there was quite a little time that he didn't have a deed?

A. No, I do not know that.

Q. There was some time?

A. I do not know.

Q. What do you say?

A. I do not know when the second deed was made, I do not remember.

Q. Do you remember the circumstance of the first deed being returned to you?

A. No, I do not just recall it.

Q. You know that you did make two deeds do you not?

A. Yes.

Q. Do you know that the first deed was never put on record?

A. No.

Q. You do not know that?

A. No.

Re-Cross Examination.

(Questions by Mr. A. H. TANNER.)

Q. You say that this security furnished by this second deed as well as the first deed was for the money that Mr. Booth or the company should advance to enable you to get a claim and pay the expenses and pay for the land and any advances they might make to you afterwards?

A. Yes sir.

Q. And that is how the matter stands at this date?

A. That is the way the matter stands today the same as it was then.

Q. Now, do you recall when this first deed was surrendered up to you?

A. No.

Q. Whether the second deed was taken at the same time?

A. I do not remember.

Q. It might have been done at the same time?

A. It might have been done at the same time as far as I remember.

Q. Did the taking of this second deed have anything to do with the trial of Mr. Booth here in the action against him,—was there any connection of any kind between them?

A. No.

Q. It had nothing to do with that?

A. No, nothing at all.

Further Direct Examination.

(Questions by Mr. JOHN McCOURT.)

Q. Do not you recall about that time that there was a subpoena out for you people,—you and your sister, and you slipped away secretly to avoid the officers?

A. No.

Q. Do not you remember going out from Saginaw to Cottage Grove and taking the train?

A. No.

Q. Did you know there was a subpoena out for you? And that you could not be found?

A. No sir.

Further Cross-Examination.

(Questions by Mr. A. H. TANNER.)

Q. Did you evade a subpoena at any time?

A. I never have.

Q. In this case, or any case?

A. Never have.

(Witness excused.)

Thereupon the taking of testimony herein is adjourned until December 20th, 1910, at the hour of two o'clock P. M. to be resumed at the Grand Jury

Room of the Circuit Court of the United States for the District of Oregon, in the City of Portland, County of Multnomah, State of Oregon.

GEO. A. BRODIE,

U. S. Examiner.

FRED C. RABB is called as a witness for the government and being first duly sworn testifies as follows:

Direct Examination.

(Questions by Mr. JOHN McCOURT.)

Q. What official position do you occupy?

A. Special Agent of the General Land Office.

Q. For how long have you been such?

A. The last three years.

Q. As such agent, are you familiar with the records of the Roseburg Land Office?

A. Yes, sir.

Q. Have you examined the records of contest and hearings of the Roseburg Land Office for the purpose of ascertaining whether or not there has been any contest, protest, adverse report, or other proceedings affecting the entries in controversy in this case?

A. I have, yes sir.

Q. What do you find upon such examination?

A. I find no action had been taken or suspension or other adverse report made against the entries during the period from January, 1901 until January, 1905 after the issuance of patents.

Q. Do you find any such proceedings prior to the issuance of patent?

A. No sir.

Q. And subsequent to the filing?

A. No, sir, there was no proceedings of record at all.

### No Cross-Examination.

(Witness excused.)

PORTLAND, DECEMBER 20, 1910. Two o'Clock P. M.

At this time, appear the parties as before the plaintiff appearing by Mr. John McCourt, District Attorney, and the Defendants appearing by Mr. A. H. Tanner and A. C. Woodcock, their attorneys, and thereupon the following proceedings are had to-wit:

GEORGE W. RIDDLE, is called as a witness for the government and being first duly sworn, testified as follows:

### Direct Examination.

(Questions by Mr. JOHN McCOURT.)

Q. What official position do you hold Mr. Riddle?

A. Receiver in the United States Land Office at Roseburg, Oregon.

Q. As such receiver, you are in control of the records and books of the land office there, together with the register?

A. Yes, sir.

Q. I show you a book entitled "Register of Entries" and having on the back thereof the designation, "Timber" and I will ask you if that is a record of your office?

A. Yes.

Q. And it covers the year 1902? Have you examined it?

A. Yes, sir, it is.

Q. I will ask you to examine the entries shown by that book under the timber and stone law and which were made upon the 7th day of February, 1902, and state what entries were made there at that time on that date as shown by this record?

A. Beginning here there is "Stephen A. La Raut, Mrs. Alice La Raut," those two seem to be the only ones that day.

Q. What number do they carry?

A. 2026 for Stephen La Raut, and 2027 for Alice La Raut.

Q. On what date does this record show that proof was made upon those two entries?

A. May the 7th, 1902. In both entries proof was made on the same day.

It is understood and agreed that these are the lands, a portion of which are in controversy in this case.

Q. Will you examine this same record for the 17th day of February, 1902, and state what entries were made on that date.

A. Lucy La Raut, Ethel M. La Raut, Dan H. Brumbaugh, and Harry A. Dunbar.

Q. Those four were made on the same day?

A. Yes.

Q. You notice by this record, when proof was made upon those four entries?

A. Proof was made on all four of those entries at

the same time: May 8th, 1902.

Q. Will you state whether or not all of those entries appear consecutively?

A. Yes, sir, they do.

Q. You may give the numbers.

A. 2245 for Lucy La Raut, and 2246 for Ethel M. La Raut, and 2247 for Daniel H. Brumbaugh, 2248 for Harry A. Dunbar.

Counsel for defendants object to any evidence relative to Brumbaugh and Dunbar as incompetent, and immaterial.

Mr. McCOURT: The evidence in the case will connect those entries with the entries in controversy later.

Q. I wish you would examine this book as to the entries made on the 14th day of February, 1902, and upon which proof was made upon the same day.

Counsel for defendant objects to the question as incompetent.

A. Thomas Roach and Edward Jordan.

Q. What are the numbers of those entries?

A. Thomas Roach 2038, and for Edward Jordan, 2039.

Q. When was proof made upon those claims? As shown by this record?

A. May 7th, 1902.

Q. In both entries was not proof made the same day?

A. The same day, yes.

Mr. McCOURT: It will not be necessary to put the record in.

Mr. TANNER: No, I do not think so.

Cross-Examination.

(Questions by Mr. A. H. TANNER.)

Q. These entries from which you have testified, were not made by you were they Mr. Riddle?

A. No sir.

Q. You simply testify by what is shown by the records?

A. That is all.

LOUIS SHARP, is called as a witness for the government being first duly sworn, testifies as follows:

Direct Examination.

(Questions by Mr. JOHN McCOURT.)

Q. What official position do you occupy Mr. Sharp?

A. Chief of the First Field Division of the General Land Office.

Q. Where are you located?

A. At Portland.

Q. Do you as such chief of Field Division have control of such action as is taken or has been taken in relation to the entries in this case?

A. Yes, sir.

Q. As it relates to the prosecution thereof?

A. Yes sir.

Q. Have you taken any action towards ascertaining whether or not there is any records in the general land office of any contest, protest, or adverse or other proceedings of any kind relating to the title to these lands after entries were made and prior to patent?

A. On October 4th, 1910, I addressed a letter to the Commissioner of the General Land Office, and requested all of the records and papers relating to any protest, contest or hearing filed involving these claims before patent was issued.

Q. What action did the commissioner take on your request?

A. On October 12, 1910, I was advised by telegram that no record of protest, contest, or hearing before patent could be found and they further asked me to wire them the office decision if possible. I made an investigation as to whether there had been any office decisions or any proceedings on record in the local office at Roseburg and found that there were none.

No Cross Examination.

(Witness excused.)

Counsel for the government offers in evidence a certified copy of the deed from Edward A. Jordan and Mary A. Jordan, his wife to the Booth-Kelly Lumber Company purporting to transfer to said company the land involved in the Jordan entry in this case, bearing date of the 22nd day of July, 1902, and showing that it was recorded on September 6, 1907, and the same is received and filed marked Government's Exhibit "I", without objection, and is in words and figures as follows, to-wit:

#### WARRANTY DEED.

THIS INDENTURE WITNESSETH, That Edward Jordan and Mary A. Jordan his wife, for and in

consideration of the sum of \$500.00 to them paid do hereby bargain, sell and convey unto The Booth-Kelly Lumber Company, a corporation, the following described premises, to-wit:

Lots Seven (7), Eight (8), Nine (9), and Ten (10), Section Two (2), Township twenty-two (22), South of Range Two (2), West, containing One Hundred and sixty (160) acres.

TO HAVE AND TO HOLD the said premises with their appurtenances unto the said The Booth-Kelly Lumber Company, a corporation, its successors and assigns forever. and the said Edward Jordan and Mary A. Jordan his wife, do hereby covenant to and with the said The Booth-Kelly Lumber Company, a corporation, its successors and assigns, that they are the owners in fee simple of said premises, and they are free from all incumbrances, and that they will warranty and defend the same from all lawful claims whatsoever.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this 22nd day of July, A. D., 1902.

[Seal.]

EDWARD JORDAN,

[Seal.]

MARY A. JORDAN,

Done in presence of:

H. A. Dunbar,

J. A. Jennings.

Witness for Mary A. Jordan.

STATE OF OREGON,

County of Lane—ss.

On this the 22nd day of July, A. D., 1902, personal-

ly came before me, a Notary Public in and for said County the within named Edward Jordan, and to me personally known to be the identical persons described in and who executed the within instrument and acknowledged to me that he executed the same freely and voluntarily for the purposes therein named.

WITNESS my hand and seal this 22nd day of July, 1902.

[Notarial Seal.]

H. A. DUNBAR,

Notary Public for the State of Oregon.

STATE OF OREGON,

County of Josephine—ss.

THIS CERTIFIES, that on the 28th day of July, A. D., 1902, before me the undersigned a Notary Public in and for said county and State, personally appeared the within named Mary A. Jordan who is known to me to be the identical person described in and who executed the within instrument and acknowledged to me that she executed the same freely and voluntarily for the uses and purposes therein mentioned.

IN TESTIMONY, I have hereunto set my hand and seal the day and year last above written.

[Notarial Seal.]

J. A. JENNINGS,

Notary Public.

Filed for Record Sept. 6, 1907, at 11:05 A. M.

E. U. LEE,

County Clerk.

By C. N. Griswold,

Deputy.

## STATE OF OREGON,

County of Lane—ss.

I, E. U. Lee, County Clerk and Ex-Officio Recorder of Conveyances in and for Lane County, State of Oregon do hereby certify that I have compared the foregoing copy of warranty deed with the original, and that the same is a correct transcript therefrom, and of the whole of said original, Warranty Deed, as the same appears of record at page 34, Book No. 76, Lane County, Deed Records, now in my official care and custody.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the county court in and for Lane County, State of Oregon, this 6th day of December, 1910.

[Seal.]

E. U. LEE,

County Clerk and Ex-Officio Recorder of Conveyances in and for Lane County, Oregon.

Counsel for the government also offers in evidence deed of Stephen A. La Raut and Alice La Raut, his wife, bearing date the 4th day of March, 1907, purporting to convey to the The Booth-Kelly Lumber Company the land involved in the Stephen A. LaRaut timber and stone entry described in the complaint herein and showing the record date as the 4th day of March, 1907, and the same is received and filed marked Government's Exhibit "J" without objection, and is in words and figures and follows, to-wit:

## WARRANTY DEED.

THIS INDENTURE, WITNESSETH, That Stephen A. La Raut, and Alice La Raut, his wife, for

and in consideration of the sum of One Hundred Dollars (\$100.00), to them paid do hereby bargain, sell and convey unto The Booth-Kelly Lumber Company and is in words and figures as follows, to-wit:

The Northeast quarter (NE $\frac{1}{4}$ ), of Section Twenty-six (26), Township Twenty-one (21), South of Range Three (3), West of the Willamette Meridian, situate in Lane County, Oregon, and containing one hundred and sixty (160) acres.

TO HAVE AND TO HOLD the said premises, with their appurtenances, unto the said The Booth-Kelly Lumber Company their successors and assigns, forever. And the said Stephen A. LaRaut does hereby covenant to and with the said The Booth-Kelly Lumber Company their successors and assigns, that he is the owner in fee simple of said premises; and that they are free from all encumbrances and that he will warrant and defend the same from all lawful claims whatsoever.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this 4th day of March A. D., 1907.

[Seal.]                      STEPHEN A. LA RAUT,

[Seal.]                      ALICE LA RAUT,

Done in presence of:

H. A. Dunbar,

L. L. Lewis.

STATE OF OREGON,

County of Lane—ss.

On this, the 4th day of March, A. D., 1907, personally came before me, a Notary Public in and for said

county the within named Stephen A. La Raut and Alice La Raut his wife, to me personally known to be the identical person described in and who executed the within instrument, and acknowledged to me that they executed the same freely and voluntarily for the purposes therein named.

WITNESS my hand and seal this 4th day of March, 1907,

[Notarial Seal.]

H. A. DUNBAR,

Notary Public for Oregon.

Filed for Record March 4th, 1907, at 1:30 P. M.

E. U. LEE,

County Clerk,

By.....Deputy.

STATE OF OREGON,

County of Lane—ss.

I, E. U. Lee, County Clerk and Ex-Officio Recorder of Conveyances in and for Lane County, State of Oregon, do hereby certify that I have compared the foregoing copy of Warranty Deed with the original, and that the same is a correct transcript therefrom, and of the whole of said original warranty deed as the same appears of record at Page 456, Book No. 70, Lane County Deed Records, now in my official care and custody.

In Witness whereof, I have hereunto set my hand and affixed the seal of the County Court in and for Lane County, State of Oregon, this 6th day of December, 1910.

[Notarial Seal.]

E. U. LEE,

County Clerk and Ex-Officio Recorder of Convey-

ances in and for Lane County, Oregon.

Counsel for the government also offers in evidence the deed of Alice La Raut and Stephen A. La Raut bearing date 4th day of March, 1907, and appearing to have been recorded on the same date purporting to convey to the Booth-Kelly Lumber Company the lands embraced in the Alice La Raut timber and stone entry described in the bill of complaint herein, and the same is received without objection, filed and marked Government's Exhibit "K" and is in words and figures as follows, to-wit:

#### WARRANTY DEED.

THIS INDENTURE WITNESSETH, That Alice La Raut and Stephen A. La Raut, her husband, for and in consideration of the sum of One Hundred (\$100) Dollars to them paid do hereby bargain, sell and convey unto the The Booth-Kelly Lumber Company the following described premises, to-wit:

The Southeast ( $SE\frac{1}{4}$ ) of Section Twenty-six (26), Township Twenty-one (21), South of Range Three (3), West of Willamette Meridian, situate in Lane County, Oregon, and containing one hundred and sixty (160) acres.

TO HAVE AND TO HOLD the said premises, with their appurtenances, unto the said The Booth-Kelly Lumber Company their successors and assigns, forever. And the said Alice La Raut does hereby covenant to and with the said The Booth-Kelly Lumber Company their successors and assigns, that she is the owner in fee simple of said premises; and that they are free from all encumbrances and that she will

warrant and defend the same from all lawful claims whatsoever.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this 4th day of March, A. D., 1907.

[Seal.] ALICE LA RAUT,  
 [Seal.] STEPHEN A. LA RAUT,  
 Done in presence of:  
 H. A. Dunbar,  
 L. L. Lewis.

STATE OF OREGON,

County of Lane—ss.

On this 4th day of March, A. D., 1907, personally came before me, a Notary Public in and for said county the within named Alice La Raut and Stephen A. La Raut her husband, to me personally known to be the identical person described in and who executed the within instrument, and acknowledged to me that they executed the same freely and voluntarily for the purposes therein named.

WITNESS my hand and seal this 4th day of March, A. D., 1907.

[Notarial Seal.] H. A. DUNBAR,  
 Notary Public for Oregon.

Filed for Record March 4, 1907, at 1:30 P. M.

E. U. LEE,  
 County Clerk.  
 By.....Deputy.

STATE OF OREGON,

County of Lane—ss.

I, E. U. Lee, County Clerk and Ex-Officio Record-

er of Conveyances in and for Lane County, State of Oregon, do hereby certify that I have compared the foregoing copy of Warranty Deed, with the original, and that the same is a correct transcript therefrom, and of the whole of said original warranty deed, as the same appears of record at page 456, Book No. 70, Lane County Deed Records now in my official care and custody.

IN WITNESS WHEREOF I have hereunto set my hand and affixed the seal of the County Court in and for Lane County, State of Oregon, this 6th day of December, 1910.

[Seal.]

E. U. LEE,

County Clerk and Ex-Officio Recorder of Conveyances in and for Lane County, Oregon.

It is stipulated and agreed by and between the parties hereto that patents for the lands embraced in timber and stone entries of Edward Jordan, Stephen A. La Raut, Alice La Raut, Ethel M. La Raut and Lucy La Raut, respectively were delivered to Frank E. Alley, on November 9, 1904, by the officers of the Roseburg Land Office and that Alley secured the same at the request of John F. Kelly.

Counsel for the government hereby notifies the defendants The Booth-Kelly Lumber Company, to produce at the hearing of this cause before George A. Brodie, all books, records and plats of the Booth-Kelly Lumber Company, showing the payment of money to Alice La Raut, Ethel La Raut, Lucy La Raut, Stephen A. La Raut, and Edward Jordan, or to any person or persons, or them either of them in re-

lation to the acquisition by said company of the lands involved in the several timber and stone entries of said persons, which are involved in this controversy or the advancing, or payment of money by said company to said parties in connection with the acquisition by said parties of said land, or any part thereof, from United States, the plaintiff herein.

And also notifies and requires the defendant the The Booth-Kelly Lumber Company to produce upon this hearing, before the said George A. Brodie, all books, records and plats of the Booth-Kelly Lumber Company showing all lands owned and controlled by said Booth-Kelly Lumber Company between the Twenty-one and Twenty-two, south of range two and three west of the Willamette Meridian, also all record of deeds delivered to said company by the persons above named between said dates.

This notice in regular form is at this time delivered to the defendant's attorney by counsel for the government.

EDWARD JORDAN being called as a witness for the government and being first duly sworn testifies as follows:

Direct Examination.

(Questions by Mr. JOHN McCOURT.)

Q. Where do you live Mr. Jordan?

A. Edgewood, California.

Q. What is your business?

A. Mill sawyer.

Q. Were you ever employed by the Booth-Kelly

Lumber Company in Oregon?

A. Yes, sir, I was.

Q. When.

A. I do not remember the exact date. It has been a good many years ago.

Q. Was it during the year 1902?

A. I cannot say, it was along about that time.

Q. Do you recall the circumstance of taking up a timber claim in Lane County, some time in 1902?

A. Yes, sir.

Q. In Section Two, Township 22, South of Range 2 West, of the Willamette Meridian?

A. Yes, sir.

Q. Were you working for the company at that time and prior thereto and since said date?

A. Yes, sir.

Q. State the circumstances under which you took up that claim,—what induced you to do it?

A. Well, I just took it up for Mr. Kelly,—John F. Kelly.

Q. How did he communicate with you?

A. Over the phone.

Q. Where were you at the time?

A. Coburg, Oregon.

Q. What were you doing at Coburg?

A. I was looking after the yards there for the company.

Q. What did Mr. Kelly say to you over the phone?

A. He asked me if I wanted to take up a timber claim for him, and I told him yes.

Q. What did he say further about it?

A. Well, he told me what he would give me.

Q. What did he say he would give you?

A. That he would give me one hundred dollars.

Q. What else was he to do besides paying that amount?

A. I do not understand.

Q. What else was he to do, besides pay you the hundred dollars?

A. He was to pay for the land and to pay my expenses.

Q. Did he tell you that over the phone?

A. No, sir.

Q. Just said he would give you a hundred dollars?

A. He did not say he would give me one hundred dollars over the phone—not until I went over and talked with him.

Q. Then what did you do?

A. I went to Cottage Grove from Eugene, and found out where this timber claim is and filed on it.

Q. Who went with you out there?

A. Mr. Roche, and Mr. Brumbaugh, Mr. Brumbaugh was out there when I got out there.

Q. Where did Mr. Roche join you?

A. In Eugene.

Q. Where did you meet Brumbaugh?

A. Setting on a fence up at some place up there.

Q. What was he doing there when you got there?

A. He was sitting on the fence there with a bundle of grub eating it.

Q. Waiting for you people?

A. I suppose so.

Q. Had you any communication with Brumbaugh prior to that time?

A. No sir.

Q. Well, at the time you talked to Kelly at Eugene, did he tell you anything about the expenses and the purchase money for the land?

A. Well, Mr. Roche had the expense money.

Q. Now, after you went to see the land, what did you do? Where did you go to?

A. Went to Roseburg and filed on it.

Q. Who went down to Roseburg with you?

A. Mr. Roche and Mr. Brumbaugh.

Q. Did you go to Roseburg more than once?

A. Yes, twice.

Q. Did Brumbaugh go with you both times?

A. I think he did.

Q. Who attended to publishing notice of proof and getting your witnesses and all that?

A. I do not know.

Q. Did you have anything to do with that at all?

A. No.

Q. How did you ascertain when it was time to go to Roseburg to make proof?

A. I think I was notified by Mr. Kelly.

Q. And when you got to Roseburg what happened?

A. We went in there to prove up.

Q. Who went in?

A. Us three fellows, Mr. Roche, Mr. Brumbaugh

and myself. I do not know whether that was the time that Mr. Booth said "Stand back awhile the Inspector was there."

Q. How long did you stand back?

A. Half an hour or such a matter, we went back of the main office and sat in the window there for a half of an hour or such a time, and he called for us.

Q. Who called for you?

A. Mr. Booth.

Q. What Booth was that?

A. Mr. J. H. Booth.

Q. Who furnished the funds at the time you proved up, who furnished the money?

A. The Booth-Kelly Lumber Company.

Q. Who carried the money there? Who had it there?

A. Mr. Roche, he carried a check.

Q. Who paid that check over to the officers of the land office for your land?

A. I gave that over myself. He gave me the check when we got to the land office.

Q. Do you remember what kind of a check that was?

A. The Booth-Kelly Lumber Company's check is all that I know.

Q. Did you get any other money besides the check there?

A. No sir.

Q. Did not have any money at all?

A. No sir.

Q. Do you know who paid the land office fees

outside of the purchase money of the land? The \$400 or \$400 or something like that?

A. No, I do not.

Q. Who paid your expenses to Roseburg? While you were there?

A. Mr. Roche.

Q. Where was Mr. Brumbaugh at the time Mr. Booth told you to stand back awhile?

A. He was right there with me.

Q. Did you have any conversation with Roche at the time you were going out to see the land with him? Or at the time you were going to Roseburg as to the manner in which the entry was being made?

A. Very few words said,—I do not think we spoke but three or four words about it.

Q. Did he make any statement to you about the arrangement he was taking his claim up on?

A. No, sir, he did not.

Q. Was anything said between you as to the amount of money either one of you were to make for your timber claims or both of you?

A. No, sir I do not remember a word about that

Q. Was anything said about your throwing away your timber right?

A. I believe I mentioned that to him, that we were throwing it away, but they were being taken up so fast, we might as well have the hundred dollars as lose it entirely, and not get any chance to get it.

Q. Did you say all that to him?

A. I said that to Mr. Roche, and he just nodded his head,—might have said something, but I do not

remember what it was. That was all the conversation he and I had.

Q. How long was it after you got back from Roseburg before you deeded the land?

A. I cannot tell you exactly,—it was not a great while though.

Q. When you made the deed out, what was done by Mr. Kelly, or whoever did it?

A. Well, Mr. Dunbar came over there as notary public and I signed the deed.

Q. Came over where?

A. To Coburg.

Q. What Mr. Dunbar was that?

A. Harry Dunbar.

Q. What was paid to you when you signed the deed?

A. Sixty-five Dollars in a check.

Q. What has become of the other thirty-five.

A. I bought a colt from him.

Q. For thirty-five dollars?

A. Yes.

Q. The colt was thirty-five dollars, that is the price of it?

A. Yes.

Q. Where was Roche's claim situated with reference to yours?

A. They joined.

Q. Now did you ever see the patent or final receipt for these lands? Or any of the papers that were issued?

A. Well, I got a receipt from the land office and

turned that over to Mr. Kelly.

Q. When did you do that?

A. When I came back from Roseburg.

Q. How long did you continue to work for the Booth-Kelly Lumber Company after that time?

A. I do not remember just how long, I did not work a great while though, I cannot tell just how long it was.

Q. Did you ever talk with Mr. Kelly or Mr. Booth about this claim afterwards?

A. I talked with Mr. Kelly.

Q. When was that?

A. Here in Portland.

Q. How did you happen to talk with him here in Portland?

A. He telephoned for me to come up.

Q. What was going on at the time?

A. The land fraud trial.

Q. What did Mr. Kelly say to you about this claim?

A. I do not remember what he did say.

Q. What?

A. I do not remember all that he did say.

Q. What do you remember?

A. I know he said if I was quized about it, the best thing for me to do was to keep my mouth shut.

Q. Did you pay Brumbaugh anything for locating you?

A. No.

Q. Did you know him prior to that time?

A. No, sir, that was my first acquaintance.

Q. How far was it, or is from Coburg to where this land is located?

A. I cannot say.

Q. Did you have any conversation with Brumbaugh there at the time he was locating you, or at the time this matter was going on, these locations for the company?

A. We talked some, yes.

Q. What was said about it?

Counsel for defendants objected to the question as irrelevant, incompetent and immaterial.

A. I do not know what he did say.

Q. What did he say about receiving his wages, if anything?

Same objection.

A. He said he was going to have a raise if he stayed out any longer.

Q. Were you present at the time Mr. Roche made his proof at the land office?

A. Yes sir.

Q. Were you one of his witnesses?

A. Yes sir.

Q. Did he see him pay for his land?

Counsel for defendants objected to the question as incompetent and immaterial.

A. Yes sir.

Q. What was Mr. Roche doing at that time if you know?

A. He was one of the bookkeepers in the office.

Q. Of the Booth-Kelly Lumber Company?

A. Yes.

Cross-Examination.

(Questions by Mr. A. H. TANNER.)

Q. You say that you were present when Mr. Roche proved up on his claim?

A. Yes sir.

Q. Where was that?

A. At Roseburg.

Q. Did you go up there with him?

A. Yes.

Q. Where did you go from?

A. Eugene.

Q. Do you remember when that was?

A. No, I do not, I cannot recall the time.

Q. You say you saw him pay for his land,—that is pay the four hundred dollars, or whatever it was for his land?

A. I saw him turn the check over.

Q. Did you see the check yourself?

A. Yes sir.

Q. And did he endorse the check?

A. Yes, sir.

Q. Who was it paid to,—the money?

A. The check was drawn to Mr. Roche, and one to myself.

Q. Who was it delivered to?

A. J. H. Booth.

Q. He was receiver of the land office at the time?

A. Yes, sir.

Q. Now, at the time you say you talked with Mr.

Brumbaugh about the raise of his wages, when was that?

A. That was when we were up on the hill there together.

Q. Where?

A. Up in the hills where the timber claim was.

Q. Locating these claims?

A. Yes, sir.

Q. Did he go up with you and show you the land? Locate you on the claim?

A. Yes sir.

Q. Well, his talking about a raise of wages did not have anything to do with locating you on the land did it?

A. No.

Q. You say you talked with Mr. Kelly here during some land fraud trials. I do not know what you mean. I suppose you refer to the land fraud cases that were being investigated by the Grand Jury?

A. Yes.

Q. Were you subpoenaed down here as a witness? Were you here at the time the Grand Jury was in session?

A. No, I was in Clatskanie.

Q. Were you here in Portland during any time of this investigation?

A. I think I was. I think I came through here.

Q. Were you here to appear or testify before the Grand Jury?

A. No, sir.

Q. Did you ever make any statement to any of

the officers, at or about that time?

A. No sir.

Q. Ever talk to Mr. Haney, or Mr. Burns about it?

A. No sir.

Q. Do you know Mr. Newhauser?

A. I have heard of him.

Q. Did not you talk to him at Clatskanie, about the case and about your claim?

A. I believe I did,—I believe he came down there, and I talked a little while with him.

Q. When was that?

A. I do not know, that was a good many years ago.

Q. Was that while these land fraud cases were being investigated?

A. Yes sir.

Q. Was it about that time?

A. Yes sir.

Q. What were you doing down there at that time?

A. Running a mill for the Keystone Lumber Company.

Q. How long had you been there?

A. Six or seven months, something like that.

Q. You understood at the time Mr. Newhauser talked to you that he was a special agent of the government, did not you?

A. Yes sir.

Q. And he came there to find out about your claim did not he?

A. Yes sir.

Q. Did you tell him at that time, about this arrangement you are testifying about?

A. No, I never told him nothing.

Q. Why did not you?

A. All I told him was that if he could find out that I had made a transfer of the claim, all right, but I would not say anything.

Q. You refused to give him any information about it at all did you?

A. I refused to talk, yes.

Q. Now, didn't you state to him at that time, that whatever arrangement you made with him was after you had made your application to purchase the land, or file on the land?

A. That I do not remember.

Q. Are you sure about that?

A. It is a long time and a fellow forgets those things you know.

Q. You say you do not remember about that?

A. No, I never told him nothing,—he asked me several questions and I refused to talk.

Q. Are you willing to swear now that you did not tell him that your arrangement with them was made after you filed on the land?

A. That my arrangements with them were made after I had filed on it?

Q. Yes, did not you tell him in substance that the arrangement you had with them was made after you filed on the land?

A. Not that I remember.

Q. You do not remember about that?

A. No.

Q. You do remember having talked with him down there?

A. Yes sir.

Q. Now, you say the first intimation that you had about this matter was a telephone message from Mr. John F. Kelly?

A. Yes sir.

Q. And you were working at that time in the Coburg mill as a sawyer?

A. No sir, I was running the yard.

Q. How long had you been working there at that time?

A. I cannot say, I worked there about four years altogether at Coburg.

Q. How long did you work for the Booth-Kelly Company all together?

A. Seven or eight years, may be more, I do not remember just how long.

Q. And all he said over the telephone to you at that time, was to ask you if you wanted to take a timber claim?

A. Yes sir.

Q. What did you tell him?

A. I told him yes.

Q. Then was that all the conversation at that time?

A. That was all until I went over to Eugene.

Q. When you went over to Eugene to the office you say you had some further talk about it?

A. Yes sir.

Q. Now, who else was present at that time, anybody?

A. Not that I know of.

Q. Had not you asked Mr. Kelly at different times, or told him at different times that you would like to get a timber claim, and would like to have him put you on to a timber claim?

A. No sir, that was the first time I ever talked to Mr. Kelly about taking a claim that I remember.

Q. You knew you had a timber right?

A. Yes sir.

Q. Did not you tell him that you would like to get a timber claim?

A. I do not think I ever did.

Q. Well are you sure about it, do you know that you never told him that?

A. Well, I am pretty near positive.

Q. You may have told him that,—it would be quite natural.

A. I do not think I did.

Q. You did want to get a claim.

A. Yes.

Q. It would be quite natural for you to state something of that kind to him.

A. I do not think I did.

Q. You have known John Kelly a long time, have not you?

A. Yes.

Q. And were quite friendly with him were not you?

A. Yes sir.

Q. Now, at the time you say you went to the office there in Eugene and had a talk with John Kelly, was there any one else present at the time?

A. No, sir.

Q. Where did the conversation take place?

A. In Mr. Kelly's office.

Q. You and he being present?

A. Yes sir.

Q. Do you remember what time it was,—when it was?

A. I do not know. I do not remember the date, it was in the evening when we had the conversation.

Q. Do you remember what day of the week it was?

A. I do not.

Q. Do you remember the time of day it was?

A. It was after supper, seven or eight o'clock something like that.

Q. Your memory is not very good about things that happen so long ago is it?

A. I can remember it.

Q. But you cannot fix the time or the dates?

A. No, that is pretty hard. I do not keep track of all those little things to remember them.

Q. Now, when you got into the office there with John Kelly, who brought up this matter again about the taking up a timber claim? Did he?

A. Yes sir.

Q. Did he explain to you what you would

have to do?

A. Yes sir.

Q. What did he tell you, you would have to do?

A. Well, he told me that I would have to go there and look at the claim and go to Roseburg and file on it.

Q. And was that all he told you about it?

A. No, he told me lots about it, I cannot remember.

Q. You cannot remember it all?

A. No sir.

Q. Well, give us as much as you can remember of what was said there between you.

A. Well, he wanted me to take up this claim.

Q. Give us his language?

A. He told me to go up on the claim that night and he told me not to let Roche have any liquor.

Q. Was Roche a drinking man?

A. I never seen him drunk while I was with him.

Q. Go right ahead.

A. He says Roche has got the expense money. We had to get two horses and went out.

Q. You went out to look at the land?

A. Yes.

Q. Mr. Brumbaugh showed you the land did he?

A. Yes sir.

Q. Did you get the numbers of the land that you wanted to enter from Brumbaugh,—did he furnish you with a description of the land?

A. Yes. We went all over it,—went to the corners.

Q. When did you go to Roseburg?

A. I think right away.

Q. The next day or a day or two afterwards?

A. Yes, I think so.

Q. You filed on the land?

A. Yes sir.

Q. Who went up with you?

A. Mr. Roche and Mr. Brumbaugh.

Q. Did they file at the same time?

A. Mr. Roche did.

Q. Mr. Brumbaugh did not?

A. I think not at the time we did.

Q. Now, you said that Mr. Kelly told you to go up there with Roche and Brumbaugh and locate a claim and not let Roche have any liquor, and that Brumbaugh would show the claim, etc.? Is that all he said at that time?

A. No, he said a whole lot, told me about when I was proving up the way I would be questioned and one thing and another.

Q. Well, did he tell you that you would have to take it for yourself and for your own benefit?

A. Yes sir.

Q. You understood that at the time?

A. Yes sir.

Q. And you went up there and made affidavit that you were taking it up for your own benefit did not you?

A. Yes sir.

Q. And that was the fact was not it?

A. No, I was taking it up for him.

Q. Well, did he tell you at that time, that you were taking it for him?

A. Certainly he did.

Q. Well, I thought you just said a moment ago that you were taking it for your own benefit.

A. I was,—the money that I was getting out of it was for my own benefit.

Q. Was there anything said there at the time about any agreement or contract that you would deed it to the Booth-Kelly Lumber Company?

A. No, nothing said.

Q. Nothing said of that kind.

A. No sir.

Q. Now, you do not know of your own knowledge anything about who furnished the money do you?

A. Yes, I had a check.

Q. I know, but you do not know where the money came from do you?

A. It was sent to R. A. Booth, that is all I knew, by the Booth-Kelly check.

Q. Well, you spoke about them furnishing the expense money,—you do not know where that money came from do you?

A. Sure,—I know that Mr. Roche had that.

Q. Mr. Roche had that?

A. Yes sir.

Q. Now, was not that a draft instead of a check,—that four hundred dollar payment,—was not that a draft instead of a check?

A. No sir, I think it was a check on the Eugene

Loan and Savings Bank.

Q. Do you know the difference between a check and a draft?

A. Yes sir.

Q. You say it was a check do you?

A. It certainly was.

Q. Do not you know that they wont accept checks at the land office?

A. They accepted those.

Q. Well, are you willing to swear it was a check?

A. Yes sir, it was a check.

Q. And not a draft?

A. No, it was not a draft.

Q. Do you swear that they accepted a check there at the land office?

A. Yes sir, I endorsed it.

Q. You endorsed it yourself?

A. Yes sir.

Q. You paid that money into the land office yourself, did you?

A. Yes.

Q. Who gave you that check?

A. Mr. Roche.

Q. Did you see the land office fees paid when you first filed on this claim,—when you made your first trip to Roseburg?

A. I cannot say, I do not remember.

Q. You did not see who paid them, or know whether they were paid or not?

A. No sir.

Q. Well, you know there was some fees to be paid

do not you?

A. No sir.

Q. Did anybody say anything to you about paying them?

A. I do not remember.

Q. Was the money furnished you to pay them with?

A. No sir.

Q. Do you know whether they were paid or not?

A. I could not swear to it.

Q. Now, you knew that people were going in there, and taking up claims did not you, and that the timber was being taken up pretty fast?

A. I knew it when I went out there.

Q. Well, you knew it before did not you?

A. I knew there was a good many timber claims taken.

Q. You knew if you got a good timber claim, you would have to get it pretty soon did not you?

A. I never thought much about it.

Q. Did not you say that to Roche?

A. I said it is hard work for us to get out and find a claim, we had better take this than to have nothing, that is what I said to him.

Q. And that was in keeping with your desire that you had had for some time to get a timber claim, was it not?

A. Like all the rest of the people, I wanted to get hold of a claim if I could.

Q. Now, after you went to Roseburg and filed on this claim, what did you do?

A. I came back.

Q. Came back where?

A. To Eugene.

Q. Did you see Mr. Kelly then after you came back?

A. I did, I gave him the little receipt that I got.

Q. Little receipt for what?

A. For the money that I paid for the land.

Q. And when you went to file on the land, when you went up there the first time to file on the land, you did not see Kelly when you came back?

A. I believe I seen him, but I never talked to him, at Eugene, when I went on back.

Q. You did have a talk with him?

A. I do not remember.

Q. Did you come back to Eugene the next day?

A. I think I did.

Q. Did not you see Mr. Kelly and talk with him at that time?

A. I think not.

Q. Did not you see him and tell him that you had been up there and filed on the claim?

A. Certainly, he sent me there.

Q. Did not you see him the next day, or whenever you came back?

A. I do not remember.

Q. Did not you see him and talk with him?

A. I might have.

Q. And was not that the time when this hundred dollars was mentioned,—after you had been to Roseburg and come back?

A. No sir, it was mentioned before that.

Q. Are you sure of that?

A. Yes sir.

Q. You say you might have talked to Mr. Kelly the next day?

A. I do not say that,—I do not remember.

Q. You said you might have as I understood you, —you said you might have seen him the day you came back and had a talk with him, is that correct?

A. I do not know whether it is or not, I do not remember talking to him.

Q. You never talked with Robert Booth about this matter?

A. Never. No sir.

Q. Now, when did you next talk to Mr. Kelly about this matter, after you had been to Roseburg and filed on the claim.

A. I think when I came back and gave him the receipt, I do not remember when that was, I do not remember when I gave him the receipt.

Q. You gave him the final receipt that you got when you paid for the land?

A. Yes sir.

Q. Is not that called a final receipt.

A. Yes sir.

Q. You came back, where did you see Mr. Kelly at that time?

A. I think I seen him there in his office.

Q. In Eugene?

A. Yes sir.

Q. You say you gave him the receipt?

A. Yes sir.

Q. What conversation occurred at that time between you?

A. I do not remember.

Q. Was anything said about the hundred dollars at that time?

A. No I think not.

Q. Was anything said at that time about a deed to the company for the land?

A. No, not that I remember of.

Q. Now, up to that time, there had been nothing said in any conversation about your deeding the land to the company had there?

A. When I went up there and paid for the land and got that receipt, he said that was all he cared for, that little receipt.

Q. Up to that time there had been nothing said about your deeding the land to the Booth-Kelly Lumber Company?

A. I think not.

Q. At the time you gave him that receipt was there anything said about the hundred dollars?

A. No sir, not that I remember of.

Q. What conversation did you have with him at that time?

A. About the hundred dollars?

Q. No, any conversation relating to the matter,—what was the conversation at the time you gave him that final receipt?

A. I do not remember what the conversation was.

Q. You did have some talk with him?

A. Yes sir.

Q. But you do not remember what it was?

A. No sir.

Q. When did you see him next?

A. I think he came over to Coburg, him and Mr. Dunbar.

Q. Did you see him with Dunbar when they came over?

A. Yes.

Q. How long was that after you had given him that final receipt?

A. I cannot say. I think six months or something.

Q. Now, you say they came over there together?

A. Him and Dunbar?

Q. About the deed did they.

A. Yes sir.

Q. You signed it over?

A. Yes.

Q. What was said at that time about the matter?

A. Well, I signed it over and he sent the deed out to Grants Pass to the First National Bank for my wife to sign.

Q. Your wife lived at Grants Pass at that time?

A. She lived at Milan, this side.

Q. Was any money paid at that time? After you and your wife had signed the deed?

A. He gave me a sixty-five dollar check that evening.

Q. When you signed the deed?

A. Yes sir.

Q. Had your wife signed it at that time?

A. It was sent out to her at Grants Pass to sign.

Q. She signed it after you had, did not she?

A. Yes sir.

Q. Now, you say the other thirty-five dollars was paid by a colt that he let you have?

A. Yes sir.

Q. When did you get the colt?

A. Oh, I got it quite a while before I took up the claim.

Q. You were owing him for the colt at the time you took up the claim, were you?

A. Yes sir.

Q. How long had you been owing him at that time?

A. I cannot say,—not very long.

Q. What wages were you getting at that time from the Booth-Kelly Company?

A. Seventy-five dollars a month.

Q. Did you have any money of your own at that time?

A. Very little.

Q. You have been around and have been in the logging business and around where timber was being bought and sold for a long time, had not you?

A. Yes sir.

Q. You knew that it was illegal to make any bargain to sell this land before you filed on it?

A. Well, I certainly knew a little about it, I didn't know much.

Q. Did not Mr. Kelly, when you had the talk with him there in the office, tell you that you could not make any agreement about it before you filed on it?

A. No, I don't remember that.

Q. He told you that you would have to swear to that didn't he?

A. Yes sir.

Q. And you understood that, you could not of course?

A. Yes.

Re-Direct Examination.

(Questions by Mr. JOHN McCOURT.)

Q. Did you have any discussion with John Kelly as to whether or not it was legal, or illegal?

A. Yes, I believe we did.

Q. What did he say to you about it?

A. He told me not to say anything about it, that there was not much harm in it, but anyhow he did not make his business public, or something to that effect.

Q. What did he say about being able to get lots of other people to take up claims?

A. He said he could get lots of fellows to do it, but he would give me a show.

Q. Did you ever make more than one deed to that land? To the Booth-Kelly Lumber Company?

A. No.

Q. Just the one deed?

A. Yes.

Q. How did Mr. Kelly notify you when it was time to make final proof?

A. I think he notified me by phone.

Q. When you came back there and gave him that receipt did he tell you when he would pay you the hundred dollars? Or when he would want the deed?

A. I do not know whether he did or not. I do not remember.

Q. Did you know what steps it would be necessary to take in order to get title to the land? In the Booth-Kelly Lumber Co.?

A. How is that?

Q. To get the title to them from you?

A. No sir.

Q. Did you make any question about anything that Mr. Kelly asked you, or told you to do in regard to the matter?

A. I think not.

Q. You accepted his directions in regard to all of that?

A. Yes.

Q. During the proceedings of the filing and making proof did you understand that Mr. Roche was to furnish the expense money?

Counsel for defendant objects to the question as incompetent and immaterial.

A. Yes.

Q. Who did you understand it from?

Counsel for the defendant objects to the question as incompetent, irrelevant and immaterial.

A. Mr. Kelly.

Q. When you came back there to Eugene before you filed and talked to Mr. Kelly in the evening, where did you have that conversation with him?

A. In his office.

Q. The Booth-Kelly Lumber Company's office?

A. No, in his private office.

Q. Back of the building?

A. On the corner.

Q. The building in which the lumber company had its office?

A. Yes sir.

### Re-Cross Examination.

(Questions by Mr. A. H. TANNER.)

Q. Now, Mr. Jordan in answer to my question a while ago, you stated that Mr. Kelly explained to you that you could not make any agreement about it before you had filed on the claim did not he?

A. No sir.

Q. You say you discussed it with him as to the legality of taking it did not you?

A. Yes sir.

Q. Did not he tell you at that time, that it was illegal to make any agreement about it before you had filed on the claim?

A. No, I do not think he did.

Q. What did he say about its being illegal?

A. I do not think he said much of anything about it.

Q. Did not he explain to you that you had to take it for your own benefit?

A. Yes sir.

Q. And you did swear that you had made no agreement, contract or anything of that kind?

A. Yes, it was for my personal benefit.

Q. Did he tell you that you would have to swear that you had made no agreement contract, or anything of that kind with any other person, to take it for their benefit?

A. Yes.

Q. He told you that did not he?

A. Yes, I think he did.

Q. He told you that you had to make oath to that?

A. I do not know what he said.

Q. Did not he explain to you that you would have to swear to those things?

A. He told me a good deal about what I would have to go through with.

Q. Did not he tell you that you could not make any agreement about conveying it until after you had title to the land?

A. No, he did not.

Q. Do you mean to say that you understood that it was an illegal transaction that you were going into?

A. Well, I did not know exactly, I was not very well posted in law.

Q. You said awhile ago that you had been about timber and in the timber business for a long time.

A. I did that.

Q. And you did not hesitate to go into this arrangement did you?

A. No.

Q. Knowing that it was an illegal matter?

A. No.

## Further Re-Direct Examination.

(Questions by Mr. JOHN McCOURT.)

Q. Was not it swearing that you were taking the land for your own use and benefit when you had made an agreement to turn it over to the Booth-Kelly Company?

A. Yes.

Q. He told you that he could get lots of other people to do that?

A. Yes.

## Further Cross-Examination.

(Questions by Mr. A. H. Tanner.)

Q. When was it when he told you that?

A. That was when I was going down there to file on the claims.

Q. You testified in answer to my question awhile ago, that there was nothing said about any contract between you and him,—that is, not a contract that you would sell the land to the Booth-Kelly Company.

A. The Booth-Kelly Lumber Company was not mentioned, it was John Kelly himself.

Q. That you would sell the land to John Kelly,—he did not say anything to you, did he about agreeing or making any contracts with him to sell it before you filed?

A. He called me up and wanted me to take up a claim.

Q. That was all there was to it?

A. There was lots more, but I do not remember what, it has been a good many years ago.

Further Cross-Examination.

(Questions by Mr. JOHN McCOURT.)

Q. And after that you did make out a deed for a hundred dollars?

A. Yes.

Q. And Mr. Kelly was taking care of all the bills

A. Yes.

Further Cross-Examination.

(Questions by Mr. A. H. TANNER.)

Q. You were interested in getting the benefit of your timber right were not you?

A. Getting the benefit of my right?

Q. Getting the benefit of the timber claim that you knew you had a right to?

A. Yes.

Q. Now, you had a right to the timber claim did not you?

A. Yes.

Q. You wanted to get the benefit of that right,—is not that what you wanted to do in the matter?

A. I wanted the money that is what I wanted.

(Witness excused.)

DANIEL H. BRUMBAUGH is called as a witness for the government and being first duly sworn, testifies as follows:

Direct Examination.

(Questions by Mr. JOHN McCOURT.)

Q. You were on the stand yesterday?

A. Yes.

Q. You testified yesterday that you were a tim-

ber cruiser for the Booth-Kelly Lumber Company in 1902,—what have you been doing the last two or three years?

A. The last two years, I have been working around at odd jobs in the winter time, and in the summer time fire warden.

Q. For whom have you been working as fire warden?

A. The Booth-Kelly Company paid my salary, but there was several companies clubbed in together. They all paid a portion, but I got my salary from the Booth-Kelly Company.

Q. You took up a timber claim about the same time as these claims involved in this suit in this same locality?

Counsel for defendants objects to the question as immaterial and irrelevant.

A. Yes sir.

Q. Where was your claim in relation to the Jordan claim?

A. Well, mine was in thirty-four, townships twenty-one and twenty-two, and his is in section 2, township twenty-two,—1, I think.

Q. Was your claim anywhere near the Dunbar claim?

A. Yes, it joined it.

Q. Joined the Dunbar claim?

A. Yes sir.

Q. State the circumstances under which you took up your claim and with whom you negotiated.

Counsel for defendants objects to the question as

incompetent, irrelevant and immaterial.

Mr. McCOURT: This is offered on the ground that it shows similar transactions at the same time as those involved in this suit, and tending to show a scheme and conspiracy to defraud the Government out of its public lands in this way.

A. There is not very much to tell,—I can tell it in a very few words. He asked me whether I would take up a timber claim, and I told him I would.

Q. Who did?

A. Mr. John Kelly.

Q. Well, did he state where he wanted you to take it?

A. He told me to pick out a good one.

Q. Did he state what locality?

A. He said on Brumbaugh Creek.

Q. And what else did he say as to what he would do if you did?

A. He told me he would furnish the money.

Q. What else?

A. And pay my expenses.

Q. Anything else?

A. And give me one hundred dollars.

Q. Well after he told you that what did you do?

A. I filed on the claim, but I do not know just how long it was after that.

Q. Then after you had filed, who took care of the balance of the matters connected with it?

A. Mr. Kelly, I suppose, I do not know.

Q. Did you have anything more to do with it?

A. No sir.

Q. When did you next do anything in regard to that claim?

A. When I proved up.

Q. How did you find out?

A. I found that out by the advertisement in the paper,—I read the paper.

Q. Who furnished the expenses?

A. Mr. Kelly, I suppose.

Q. Who directly attended to it?

A. Mr. Dunbar handed me the money.

Q. Where?

A. At Roseburg.

Q. Where did you meet Mr. Dunbar at the time you went to Roseburg to prove up?

A. I do not know whether he went on the same train that I was on or not. But we met at Roseburg just the same.

Q. Who else was there attending to the taking of claims at the same time that you proved up, or at the same time you were there?

A. Well, I do not know. There was three or four others, but I do not know who they were now.

Q. Did you meet Edward Jordan there?

A. I cannot swear that he was there, but I think he was.

Q. Was Mr. Roche there?

A. I am not positive whether Mr. Roche was there or not.

Q. Were you one of Mr. Jordan's proofmen?

A. I guess I was come to think about it.

Q. Do you recall a transaction that occurred there

in the office while you were there,—when you went in there to make proof with Jordan?

A. I think we had to wait fifteen or twenty minutes for some cause, I do not know what it was.

Q. You did not hear what it was?

A. No, I did not.

Q. Well, after you made proof what did you do with your claim?

A. I deeded it a couple of years after that to Mr. Kelly, or the Booth-Kelly Lumber Company.

Q. Deeded it over?

A. Yes sir, I do not know just how long it was, it was about two years after.

Q. How long was it before you were paid the hundred dollars?

A. I do not know, it was quite a long time. I did not get the hundred dollars until I made the deed.

Q. You got a hundred dollars at the time you made the deed?

A. Yes.

Q. Did you ever make more than one deed?

A. Not that I know of.

Q. Did Mr. Kelly say anything to you about deeding the land, and what time he was to give you the hundred dollars?

A. No, he never said anything about it.

Q. Who did he say the claim was for?

A. He said "I",—well, that is the way he talked,—he said "I will give you one hundred dollars". He didn't mention any name and he said "I will."

Q. Do you know who you did deed it to?

A. I cannot swear now whether I deeded it to him, or to the Booth-Kelly Lumber Company.

Q. Where was it you had this conversation with him?

A. I cannot swear that, for I do not recollect. It was either at Cottage Grove or at Eugene, I do not know which.

Q. You were in the employ of the company at that time?

A. Yes, sure.

Q. Was Mr. Kelly, at that time an officer of the company?

A. I suppose he was.

Q. Was he the man with whom you did all your business for the company?

A. Yes sir.

Q. That was Mr. John F. Kelly?

A. Yes.

#### Cross-Examination.

(Questions by Mr. A. H. TANNER.)

Q. How long had you known John F. Kelly, Mr. Brumbaugh?

A. Prior to that time?

Q. Yes.

A. I do not know,—probably a year and a half, possibly it might have been two years.

Q. Were you employed by the Booth-Kelly company at that time.

A. At that time yes.

Q. In what way?

A. I was running a compass most of the time for

a cruiser.

Q. Had you cruised land for them before that time?

A. I do not recollect ever cruising any up to that time, but I did since that.

Q. You were generally under the direction of John Kelly in your cruising operations?

A. When we were cruising, of course, I went according to the cruiser's orders, the cruiser gave the orders and I obeyed his orders.

Q. You got your orders generally from John Kelly?

A. I do not know where the cruiser got his orders,—I done as he said.

Q. When you went out with the cruiser you mean?

A. Yes.

Q. You ran the compass and located the corners and the cruiser cruised the timber, is that the idea?

A. Yes.

Q. So you went in pairs?

A. Yes sir.

Q. Who was accustomed to cruise with you?

A. Mr. Riggs.

Q. Who did you say?

A. Mr. Riggs.

Q. That was the man who was on the stand here yesterday?

A. Yes sir.

Q. Where did this conversation occur, in which you state that John Kelly asked you if you didn't

want to take a timber claim?

A. I cannot tell you where it was,—whether it was at Eugene, or at Cottage Grove, I do not know which.

Q. Where were you located at that time?

A. I was located on Brumbaugh Creek.

Q. Up on the hill there?

A. Yes sir.

Q. How far from Eugene?

A. It is about twenty-eight miles I guess.

Q. Was that all that was said at that time about it? If you didn't want to take a timber claim?

A. Yes.

Q. Well, you wanted to take a timber claim did not you?

A. Why, of course I did.

Q. Had not you told him before that that you wanted to get a timber claim?

A. He simply asked me if I would like to take a claim and I told him I would.

Q. And did he tell you to pick out one up there?

A. He told me to pick out a good one.

Q. And you did so?

A. I picked out one that I thought was good.

Q. And then how soon after that did you go to Roseburg to file on it?

A. I do not know, it was pretty shortly,—it was not but a very few days.

Q. Now, when did you come back from Roseburg,—the next day, or how soon afterwards?

A. We stayed one night.

Q. You came back to Eugene did not you?

A. At the time I proved up I think I got on at Cottage Grove, and took some people up on to Row River.

Q. Did you see Mr. Kelly at the time?

A. No sir.

Q. When did you next see Mr. Kelly after you had filed on the claim?

A. I do not know—probably a month, or it might have been two months, I do not have any recollection of that—when it was.

Q. Now, do you recall the circumstances of seeing him a month or so afterwards?

A. Oh, I seen him, but I do not know just how long it was.

Q. Well, what occurred between you at that time?

A. When I met him the next time?

Q. Yes.

A. He asked me if I proved up all right and I told him I had.

Q. Is not that when the conversation about the hundred dollars occurred?

A. No sir.

Q. Was anything said at that time about the hundred dollars, or about deeding the land?

A. No sir.

Q. When was the talk about the hundred dollars as you now claim?

A. When he asked me whether I would like to take up a claim?

Q. Now, did not he say there would be one hun-

dred or such a matter in it?

A. Sure, he was to give me a hundred dollars.

Q. There was no agreement or contract made at that time to sell the land or to make a deed to the Booth-Kelly Lumber Company was there?

A. Nothing more than that he would give me one hundred dollars.

Q. You did not agree to sell him the claim for that did you?

A. I told him I would take it.

Q. You did not make any agreement that you would sell your claim for that at that time?

A. Nothing more than I told him I would take it was all,—no agreement or anything of that kind.

Q. You remember making an affidavit here before Haney or Burns, or whoever it was?

A. Yes sir.

Q. Did not you swear in that affidavit, that the arrangement you had about this land and selling it was made after you filed on the claim?

Counsel for the government objects to the question unless the affidavit is shown the witness.

Question withdrawn.

Q. Do not you remember anything about what was in the affidavit.

A. That affidavit calls for timber regarding Jones and Cook, most of it.

Q. Was not it in relation to this claim?

A. Something was asked, I do not know exactly what it was now. I do not know just exactly how it was.

Q. Who did you furnish that affidavit to?

A. I do not know who called on me for it.

Q. When did you make the affidavit?

A. I do not know that.

Q. Was it during the time of the land fraud investigation here?

A. Well, it was some time during that time, yes.

Q. Did they have you down here before the Grand Jury?

A. Yes sir.

Q. Did you testify about this matter before the Grand Jury?

A. No sir.

Q. You do not know whom you did furnish the affidavit to?

A. I do not recollect.

Q. Did you state anything in your affidavit about your claim, which you have now testified to?

A. There was something mentioned in it, but I do not know just what it was now.

Q. Did not you state in that affidavit, that you had made no agreement to sell the land to Kelly, or to the Booth-Kelly Company, before you filed on the claim?

A. I do not know whether I did or not, because I do not recollect anything about what I put in it.

Counsel for defendants here state that they desire to notify counsel for the government to produce that affidavit.

Mr. McCOURT: We will produce it if we can get it but we never have seen it.

Q. Now, you say that you found out about the time to prove up from the paper,—you discovered that yourself?

A. Yes.

Q. You were keeping watch of that yourself?

A. I saw the paper that it was advertised in.

Q. Where was the deed to the Booth-Kelly Lumber Company made?

A. You mean signed up?

Q. Yes.

A. I think it was Cottage Grove,—I would not be positive.

Q. Are you a married man?

A. Yes sir.

Q. Did your wife sign the deed?

A. I think she did.

Q. Did she ever do any talking with Mr. Kelly about the land?

A. No sir.

Q. When was it you say that you got the hundred dollars or did you get it?

A. When I made the deed, or about that time, or along there somewhere.

Q. The company had furnished you the money to pay the four hundred dollars to the government, and to pay the expenses, how much were they, do you remember?

A. Twenty dollars.

Q. Twenty dollars?

A. Yes sir.

Q. That would be four hundred twenty dollars,

and they paid your expenses up there, looking over the land, or did you pay your own expenses?

A. I do not recollect about that.

Q. And with the hundred dollars that you got out of it, would be five hundred and twenty dollars?

A. Yes.

Q. Five hundred and twenty dollars, that you sold the land for, was it?

A. Yes sir.

Q. When was it you made the deed?

A. I do not recollect.

Q. Was there anything said in this conversation you had with Mr. Kelly, as you say before you filed on the claim that you were to deed it to the company?

A. No sir.

Q. There was nothing said about that?

A. No sir.

Re-Direct Examination.

(Questions by Mr. JOHN McCOURT.)

Q. Who handed you this twenty dollars that you spoke of?

A. Mr. Dunbar.

Q. When was that given to you? With reference to the time you made proof.

A. In the Roseburg office.

Q. At the time you looked at this land, you were in the employ of the company?

A. Yes.

Q. And you were engaged in showing other persons land at the request of Mr. Kelly.

A. Yes sir.

Q. In regard to this deed matter now, did you pay any attention to the steps that were being taken by him in getting the land from you to the Booth-Kelly Company, or to John Kelly?

A. No sir.

Q. Whose directions did you follow in regard to that matter?

A. I didn't follow any. I didn't pay any attention to it.

Q. Under whose direction was all your actions in regard to the matter done?

A. I suppose myself, that is one hundred dollars of it.

Q. And who was the land for?

A. I suppose for John Kelly.

Q. And the hundred dollars was the purpose that you had in doing these things?

A. Yes, I was doing it for one hundred dollars.

#### Re-Cross Examination.

(Questions by Mr. A. H. TANNER.)

Q. You knew in order to get the hundred dollars that you would have to get title to the land?

A. Sure, I would have to get the land to get the hundred dollars.

Q. And you knew the only way to get title to the land was to file on it for yourself for your benefit, did not you?

A. Sure I had to file on the land, and prove up on it.

Q. Did not Mr. Kelly explain to you that he could not make any agreement with you about it before you filed on it?

A. No.

Q. Didn't he tell you what you would have to swear to?

A. No sir.

Q. You knew before?

A. I did not know before I went out there.

Q. You had been in the timber business, and was at that time?

A. That is the first time I was ever in the land office about a timber claim that I know of.

Q. You knew that you would have to swear that you had not made any agreement or contract to sell the land to anybody else, did not you?

A. I knew I would have to swear that it was for my own benefit.

Q. Is it not a fact that you entered this claim for your own benefit?

A. For the benefit of one hundred dollars.

Q. You got that much out of it?

A. Sure.

Q. You got that much out of it for the benefit of yourself?

A. Sure.

Further Direct Examination.

(Questions by Mr. JOHN McCOURT.)

Q. This man Dunbar that you mentioned,—who was he? In what capacity was he employed?

A. He was bookkeeper.

Q. For whom?

A. For the Booth-Kelly Lumber Company.

Q. Was he taking a claim there too?

A. Yes sir.

Counsel for defendants object to the question and answer as irrelevant and immaterial.

(Witness excused.)

Thereupon, the taking of testimony herein is adjourned until tomorrow morning, December 21, 1910, at the hour of 10 o'clock A. M.

GEO. A. BRODIE,

U. S. Examiner.

Portland, December 21st, 1910.

Ten o'clock A. M.

At this time appear the parties as before, the government appearing by Mr. John McCourt, and the defendants appearing by Mr. A. H. Tanner, and A. C. Woodcock, and after a discussion between the parties in regard to a stipulation, the taking of testimony herein was adjourned to meet on agreement of parties.

GEO. A. BRODIE,

U. S. Examiner.

Portland, Oregon, January 17, 1911.

10 o'clock A. M.

At this time pursuant to agreement the parties herein appeared before the Examiner of the above entitled Court in the Grand Jury Room in the City of Portland, Multnomah County, Oregon. The Government appearing by Mr. John McCourt, and F. C. Rabb, the defendant, the Booth Kelly Lumber Com-

pany, by A. C. Woodcock, and A. H. Tanner, its attorneys, and thereupon the following proceedings are had, to-wit:

Counsel for the government offers in evidence a transcript of the entries contained in the books of accounts and records of the Booth-Kelly Lumber Company the defendant, containing memoranda of payment of money by the Booth-Kelly Lumber Company upon account of the land claims involved in this case, and those other claims mentioned in the evidence herein. Said transcript contains all of the payments made by said Booth-Kelly Lumber Company on behalf of, and upon the land claims herein and the transcript mentioned is offered in lieu of the book, and it is stipulated and agreed by and between the parties hereto that the same may be considered as evidence herein in lieu of the books, and it is further stipulated and agreed that there are no other charges or accounts or memoranda of payments made by the Booth-Kelly Lumber Company, on account of said land contained in said book and records of said company, either in the names of the parties entering said land or in the names of any one else.

Counsel for the Booth-Kelly Lumber Company objects to the introduction of the same in evidence on the ground that the same is irrelevant and immaterial and incompetent but does not object to the form of the proof.

The document referred to is received and filed in evidence marked "Government's Exhibit 'K'", and is in words and figures as follows, to-wit:

## EDW. JORDAN.

1902.

May 8, J. 108-Check .....	\$ 400.00	
Aug. 7, J. 209-Credit to J. F. Kelly	100.00	
Oct 23, J. 279 Charge to stump- age for Lots 7, 8, 9, 10, Sec. 2, Tp. 22, 2 w. ....		\$ 500.00
	<hr/>	<hr/>
	\$ 500.00	\$ 500.00

## S. A. LA RAUT.

1902.

May 8, J. 108-Check .....	\$ 400.00	
July 31, J. 200-Check .....	134.50	
July 31, J. 199 Credit .....		\$ 34.50
July 31, J. 199 Charge to stump- age for NE $\frac{1}{4}$ Sec. 26, Tp. 21, 3 w. ....		500.00
	<hr/>	<hr/>
	\$ 534.50	\$ 534.50

## MRS. S. A. LA RAUT.

1902.

May 8, J. 108 Check .....	\$ 400.00	
July 31, J. 200 Check .....	100.00	
July 31, J. 199 Charge to stump- age for SE $\frac{1}{4}$ Sec. 26. Tp. 21, 3 w. ....		\$ 500.00
	<hr/>	<hr/>
	\$ 500.00	\$ 500.00

ETHEL LA RAUT.

1902.

May 8, J 108 Check .....	\$ 400.00	
July 31, J. 200 Check .....	100.00	
July 31, J 199 Charge to stump- age for lots 9, 10, 15, 16, Sec. 28, Tp. 21-2 West .....		\$ 500.00
	<hr/>	<hr/>
	\$ 500.00	\$ 500.00

LUCY LA RAUT.

1902.

May 8, J. 108 Check .....	\$ 400.00	
Aug. 12, J. 213 Check .....	100.00	
July 31, J. 199 Charge to stump- age for Lots 1, 2, 7, 8, Sec. 28, Tp. 21, 2 w. ....		\$ 500.00
	<hr/>	<hr/>
	\$ 500.00	\$ 500.00

THOS. ROCHE.

1902.

May 8, J. 108 Check .....	\$ 400.00	
July 31, J. 199 Charge to stump- age for SE $\frac{1}{4}$ Sec. 2, Tp. 22, 2 w. ....		\$ 500.00
	<hr/>	<hr/>

1904.

Dec. 31, J. 246 Charge to stump- age for SE $\frac{1}{4}$ Sec. 2, Tp. 22, 2 West .....		\$ 800.00
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## H. A. DUNBAR.

1902.

May 8, J. 108 Check .....	\$ 400.00
July 31, J. 199 Charge to stump- age for NW $\frac{1}{4}$ Sec. 32, Tp. 21, 2 West .....	\$ 500.00

1904. J. 246 Charge to stump- age for NW $\frac{1}{4}$ Sec. 34, Tp. 21, 2 West .....	\$ 800.00
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The above accounts are not closed, as salaries are credited and money charged as needed, but above are all the entries regarding claims sold.

## D. H. BRUMBAUGH.

1902.

May 8, J. 108 Check .....	\$ 400.00
June 11, J. 148 Compass .....	8.00
Oct. 30, J. 285 Check .....	56.50

1903.

May 19, J. 136 Check .....	100.00
Sept. 22, J. 260 Check .....	70.00
Nov. 16, C. 205 Check, cash .....	10.00
Dec. C. 221 Check, J. F. Kelly....	10.00
Dec. 16, J. 223 Cash .....	5.00
Dec. 31, J. 330 Check .....	83.25

1904.

Feb. 29, J. 38 Check .....	74.45
Aug. 31, J. 169 Check .....	100.00
Sept. 30, J. 189 Check .....	399.84

1902.

Oct. 23, J. 279 Cruising on Teeters Creek for J. F. Kelly, Trustee	\$ 64.50
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1903.

Dec. 15, J. 327 J. F. Kelly, Trustee .....	70.00
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Dec. 15, J 327 Cruising .....	108.25
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1904.

Feb. 25, J. 33 Cruising in Jackson Co. ....	74.45
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Sept. 23, J. 183 Charged to stumpage for NE $\frac{1}{4}$ Sec. 34 Tp. 21, 2 w. ....	500.00
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Nov. 30, J. 225 Cruising and fire patrol .....	499.84
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<u>\$1,317.04</u>	<u>\$1,317.04</u>
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### STUMPAGE.

1902.

July 31, S. L. La Raut, NE $\frac{1}{4}$ Sec. 26, Tp. 21, 3 w. ....	\$ 500.00
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July 31, Mrs. S. A. La Raut, SE $\frac{1}{4}$ Sec. 26, Tp. 21, 3 w. ....	500.00
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July 31, Ethel La Raut, Lots 9, 10, 15, 16, Sec. 28, Tp. 21, 2 w. ....	500.00
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July 31, Lucy La Raut, Lots 1, 2, 7, 8, Sec. 28, Tp. 21, 2 w. ....	500.00
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July 31, Thos. Roche, SE $\frac{1}{4}$ Sec. 2, Tp. 22, 2 w. ....	500.00
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July 31, H. A. Dunbar, NW $\frac{1}{4}$ Sec. 34, Tp. 21, 2 w. ....	500.00
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Dec. 31, Brumbaugh, Land Claims .....	301.03
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1904.

Sept. 23, D. H. Brumbaugh, NE $\frac{1}{4}$ Sec. 34, Tp. 21, 2 w. ....	500.00
Dec. 31, Thos Roche, SE $\frac{1}{4}$ Sec. 2, Tp. 22, 2 w. ....	800.00
Dec. 31, H. A. Dunbar, NW $\frac{1}{4}$ Sec. 34, Tp. 21, 2 w. ....	800.00

1907.

Sept. 9, Pay't on Lots 1, 2, 7, 8, and Lots 9, 10, 15, 16, Sec. 28, Tp. 21, 2 w. ....	50.00
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1910.

Feb. 3, S. A. La Raut, Pay't on NE $\frac{1}{4}$ Sec. 26, Tp. 21, 3 w. ....	50.00
Feb. 3, Mrs. S. A. La Raut, Pay't on SE $\frac{1}{4}$ Sec. 26, Tp. 21, 3 w. ....	50.00
	<hr/>
	\$6,051.00

## BRUMBAUGH LAND CLAIMS.

1902.

March 18, C. 55:

Adv. Ethel La Raut .....	\$ 8.00
Adv. H. A. Dunbar .....	8.00
Adv. Lucy La Raut .....	8.00
Adv. S. A. La Raut .....	8.00
Adv. Alice La Raut .....	8.00
Adv. D. H. Brumbaugh .....	8.00
Adv. Thos. Roche .....	8.00
Adv. Edw. Jordan .....	8.00
	<hr/>
	\$ 64.00

## March 18, C. 55:

Fare, Dunbar, Saginaw .....	\$ .72	
Supper .....	.25	
Breakfast and dinner .....	.50	
Fare, Eugene .....	.72	
Fare, Lucy La Raut, Saginaw ....	.72	
Fare, A. H. Dunbar, Saginaw....	.72	
Supper 25c, breakfast 25c .....	.50	
Orin Robinson, cruising .....	1.50	
Fare, E. & L. La Raut, Roseburg	4.50	
Supper and bed .....	.75	
Hotel bill, E. L. La Raut .....	1.50	
F. E. Alley .....	3.00	
Hotel bill, H. A. Dunbar .....	.75	
Fare, E. La Raut, Saginaw .....	2.26	
Fare, H. A. Dunbar, to Eugene....	3.00	\$ 21.39

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## March 20, J. 65:

S. A. La Raut .....	9.00	
Ethel and Lucy La Raut .....	3.00	
H. A. Dunbar .....	4.50	
Guy La Raut .....	.50	
Lunch, E. & L. La Raut .....	.80	\$ 17.80

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## June 3, C. 117:

2½ days by D. H. Brumbaugh,	
2.50 .....	8.75
Fare to Roseburg & return .....	4.30
Board & Lodging .....	1.75
Fare to Roseburg & return .....	5.15
Board & Lodging .....	1.25

Fare to Roseburg & return .....	5.15	
Board .....	.50	
O. Robinson .....	9.30	\$ 36.15

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July 19, J. 189:

2 tickets, Eugene to C. G.....	\$ 1.65	
Meals &c. ....	1.00	
Pd. Brumbaugh, meals, etc. ....	2.10	
Pd. Chrisman & Bangs, horses ..	6.00	
Ex. at C. G. ....	1.50	
2 tickets, Roseburg .....	4.65	
Meals .....	.50	
2 tickets, Roseburg to Eugene ....	6.00	\$ 23.40

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Forwarded .....	\$162.74	
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1902.

Forwarded \$162.74

July 19, J. 189:

Recording Fee .....	\$ 10.00	
Testimony .....	.45	
Fare, Roseburg & return .....	6.00	\$ 16.45

July 19, C. 151:

Fare, Eugene to Roseburg .....	3.00	
Ethel Ec. & Filing .....	20.00	
Lucy, Ec. & Filing .....	10.00	
H. A. D., Ec. & Filing .....	10.50	
Hotel, La Raut girls .....	1.50	
Add'l filing fees .....	14.10	
Fare, Ethel, Saginaw to Rose-		
burg and return .....	4.52	

Fare, Lucy Wilbur, to Roseburg	
and return .....	.72
Hotel, H. A. D. ....	2.00
Roseburg, Eugene .....	3.00 \$ 69.84
	<hr/>

July 19, C. 153.

July 19, C. 153, D. Brumbaugh .....	\$ 12.50
July 19, C. 153, D. Brumbaugh,	
ticket .....	3.00 \$ 15.50
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July 31, J. 199, S. A. La Raut .....	34.50
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July 31, J. 201, Saginaw invoice .....	2.50
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1902.

Dec. 31, J. 358, Charge to stump-	
age .....	301.03

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\$301.03	\$301.03	

It is stipulated and agreed by and between the parties that the Booth-Kelly Lumber Company at all times since the execution of the patents to the entries involved in this case, has paid taxes on this land and has exercised dominion and control over the same, and it is further stipulated and agreed that at all times between the first day of January, 1902, and the first day of February, 1907, Robert A. Booth was manager of the Booth-Kelly Lumber Company, and at all times between the first day of January, 1902, and the first day of January, 1903, J. H. Booth was Secretary of the Booth-Kelly Lumber Company, and receiver of the United States Land Office at Roseburg, Oregon.

## Government Rests.

## DEFENDANT'S EVIDENCE.

ROBERT A. BOOTH is called as a witness for the defendants, and being first duly sworn testifies as follows:

(Questions by Mr. A. H. TANNER.)

Q. State your name, age, residence and occupation.

A. 52 years old, residence Eugene, lumbering and timber business principally.

Q. State your connection in a general way with the defendant, the Booth-Kelly Lumber Company.

A. At the present time.

Q. No, from the beginning of the organization of that company.

A. In the beginning, I was associated with George and John Kelly, and J. H. Booth in a simple partnership and later we formed a corporation, and I have since been a stockholder therein. I was manager from November 1st, 1899, to February, 1907. I have been a director from the time of its organization to the present time with the exception of from February, 1907, to February, 1910.

Q. State what the plant of that company consists of and what its business was?

A. In the beginning it was a lease from John J. John of the property known as the Saginaw Plant, and after operating for a year under that lease, we bought that plant, and since that time, or at least during a number of years immediately succeeding we added other plants, the Coburg plant by purchase,

and we built mills at Wendling and Springfield, and purchased timber generally, in that part of Lane County, between Douglas and Linn, and we have been operating since that time.

Q. Was the timber purchased mainly tributary to these mills?

A. All of it.

Q. And why was the timber acquired?

A. For the purpose of operating largely. We made some purchases at the time they were made, which had some speculative features about them that we thought we might operate or probably sell, but those tracts of land immediately about the plants, we bought with a view of operating.

Q. Do you recall the circumstances of the entries that were made on this land in what is known as "Brumbaugh Creek Section," by Stephen A. La Raut, and his wife, and Ethel M. La Raut and Lucy La Raut?

A. I do.

Q. I will ask you to state what relation you are to those parties just named.

A. Stephen, Ethel and Lucy, are brothers and sisters respectively of my wife.

Q. And Alice La Raut is the wife of Stephen A. La Raut?

A. Yes, she is the wife of Stephen A. La Raut.

Q. How long had they been married?

A. Stephen and Alice?

Q. Yes.

A. I do not recall how many years.

Q. How long have you been married to your wife?

A. Twenty odd years at that time.

Q. I will ask you to state whether or not on account of your relation to the La Raut family, you helped them in any way, and if so state in a general way to what extent and in what manner?

A. I frequently have helped them and at different times I have helped all members of the family, several ways. I have at different times given money and property to Narcissa La Raut, my father-in-law, and I have assisted largely in the education of part of his children, two of his boys especially. I have given money and property to the girls, and aided them in getting employment and so with some of the boys.

Q. State whether or not the girls,—I mean Ethel and Lucy, as well as Stephen also, were accustomed to advise with you about their affairs?

A. Yes sir.

Q. You may state what the facts are in regard to their approaching you about these timber claims, involved in this suit?

A. About the time I became active in the management of the company Ethel asked me about getting her a timber claim, and I stated that I would aid her if I could, and later had an opportunity of securing a claim in the Brumbaugh district, and I reported it to her. Some little time after that,—a few days, as I now recall, about ten days,—she asked if I could do the same thing with Lucy, and I answered that I could, and still later she asked if the same

thing could be done with Stephen and his wife, and I stated that I thought it could. And later, finding an opportunity, I reported that I could. I stated to her that I would furnish the money for the claims and carry them until such time as they could dispose of them.

Q. Did she make the arrangements with you for the others, as well as herself?

A. She did.

Q. Did you have any talk or conversation with Stephen La Raut, or his wife, or with Lucy about it personally?

A. Not until a number of years after they were taken.

Q. I mean at the time they were taken?

A. I did not with any person, except Ethel.

Q. That arrangement was all made with Ethel?

A. Yes sir.

Q. And the same arrangement was made as to the others that was made as to hers, was it?

A. She asked if they would be given the same opportunity as I had offered her,—that is, carry the claims for them and advance whatever money was necessary until such time as they were able to dispose of the property, and I said that I would.

Q. Were those claims taken by those people for their own benefit?

A. They were.

Q. Was there any understanding or agreement either directly, or indirectly between you and Ethel La Raut or any of the other La Rauts, whose names

are involved in this suit, that they were taking or filing upon this land for you, or for the Booth-Kelly Lumber Company, or that they were to deed that to you, or to the Booth-Kelly Lumber, or any thing of that kind?

A. There was not.

Q. Now, what was done with reference to locating them upon the claims in question?

A. In those years, Mr. John Kelly was the acting force there, looking out for timber purchases, and I asked him to look out, or report to me if there was any opportunity to take up any claims that would be near or where these parties could get the benefit of them, and in the course of time he reported the claims that they afterwards took, and I gave instructions that they should be shown the claims, and did such things as was necessary to comply with the law, and furnish the money for securing them.

Q. To whom did you give instructions as to furnishing the money?

A. Mr. Dunbar,—Mr. H. A. Dunbar, he was then bookkeeper for the company.

Q. What instructions if any, was given to him about taking the girls up there to the land office, and assisting them in relation to filing on the claims, and so on?

A. He was asked to do whatever was necessary to carry out the understanding which I have related. I mean to say so far as the furnishing of the money was concerned. As to the details of going on to the claims and so on, I do not think I gave any instruc-

tions about that, that was under the direction of Mr. Kelly.

Q. Are you acquainted with Mrs. Applestone who was a witness for the government in this case?

A. I am.

Q. What relation is she to the La Raut family?

A. She is a daughter of Stephen La Raut's wife by her first husband,—Mr. Steel.

Q. She testified here in this case, that her mother told her that she and Stephen and perhaps the others, had taken these claims for you, or words to that effect,—I will ask you to state whether that is true or not?

A. It is not true, so far as any agreement with me is concerned.

Q. When did you first have a conversation with Stephen and his wife about the claims?

A. In 1908.

Q. You may state the circumstances under which you had the conversation with him about it.

A. Well, I with others was on trial here in the Federal Court at that time, and this young lady came to Portland from Lewiston, and stated to me that she had been called here by the government, and information solicited and so on, in relation to the claims that these parties had secured, and I asked her what she knew about it. She said nothing of consequence, that she had heard her mother say, or talk as to what she would do with some of the funds when they sold their claim. I went to Eugene then and talked with Stephen and his wife in relation to it. That was the

first time it was ever mentioned to them, and I asked them what they had said, and what Ethel had said to them. I have talked with them a number of times since, but that was the first time that I talked to them about it.

Q. What did he tell you that Ethel had told him?

Counsel for the government objects to the question as incompetent, irrelevant and immaterial.

A. He said as I have stated to her that I would aid them in furnishing the money to get the claims and to handle them to the best advantage, as I had stated to Ethel, and that she had reported to him that if we sold the land where these claims were located, as we probably would that these claims would be put in with ours, and that if we did not sell them, and at a later day, operated them, and could use the timber, we would pay them for it per thousand feet. And his wife confirmed that, and that was what I had said to Ethel.

Q. Now, I will ask you if you recall the circumstance of taking deeds from these parties,—that is, from the four La Rauts which you have mentioned?

A. I had deeds made from them to me and I carried them for a time.

Q. Were those deeds made to you personally?

A. They were made to me personally, and were taken as a matter of security.

Q. About when?

A. Well, I cannot give you the exact date, but I think it was soon after the claims were proved up on, or after we had advanced considerable funds.

Q. What was the purpose of taking those deeds?

A. To secure us for the money that they had received for them.

Q. Explain if you please, why the deeds were taken by you personally at that time, instead of to the Booth-Kelly Lumber Company?

A. Well, I had stated to Mr. Dunbar that the money for these claims was to come from me, and they were taken for that reason, because I was to be responsible for the money that went into them, whether it was my own funds, or the company's funds. In fact at that time there was no thought or any plan for the company carrying them, and it was expected that the amounts they were to be advanced would be taken from my funds, and I had so directed Mr. Dunbar.

Q. Now do you know about the taking of the second deed that were made by them?

A. Yes, I do—in part at least.

Q. Do you recall when that was done?

A. That was done after I left the management. It was done under the direction of Mr. George Kelly. I had related to him the circumstances under which these claims were taken and when I went out of the management, he succeeded me.

Q. When did you go out?

A. Well, the election was in February, 1907, I do not remember the exact date. I aided him more or less until the first of April following, and the deeds were taken in 1907, to the company.

Q. You were succeeded as manager by George H.

Kelly?

A. Yes.

Q. Now, did you explain to Mr. Kelly when you went out as manager, the condition under which, or the condition in which these claims were in?

A. I explained it fully to him, and said to him that if the company continued to carry them as they were carrying them at that time, that I would be responsible to them for the return of their money, and interest and costs, provided they did not buy the claims afterwards, and I related to him carefully what had been said to Ethel in relation to the claims.

Q. Were these second deeds after patent had been issued, or do you know about that?

A. I cannot state positively, but it was my understanding that they were. The understanding then was, that the company was carrying these under my guarantee, and it became necessary for their protection as security, to get the deeds of record so far as Stephen La Raut was concerned, because he was considerably involved and he was threatened with litigation, that might result in a judgment, and for that reason, deeds were taken and recorded.

Q. Now what was the purpose of those second deeds, or did it change the title in the company?

A. To transfer it from myself. To turn them over to the company, because Mr. Kelly agreed that they would carry them, and they had the deeds running to them.

Q. Now what is the fact, so far as you know as to which of the claims had been carried in that way?

A. The claims of Ethel La Raut and Lucy La Raut have been carried in that way. The claims of Stephen and his wife were carried in that way until the time he prepared to go to Canada last spring, then he came for the purpose of selling his claim and receiving whatever money he could for it and I stated to him that I was not manager, and that it was a matter for Mr. Kelly, and I told him to see Mr. George H. Kelly about it, which he did. Mr. Kelly had notified the directors of the company that he did not want to or would not serve any longer as manager, and it was about the time that he was being succeeded by Mr. Dixon.

Q. As manager?

A. As manager of the company, Mr. A. C. Dixon. Mr. Kelly went to Mr. Dixon and spoke to him about the matter, and related to him what had been stated to him by me when Mr. Kelly was succeeded by me, and Mr. Dixon said that he was new and had hardly got hold of the ropes and referred him back to Mr. George H. Kelly, and he negotiated with Stephen La Raut for the claims, and purchased them, and the others are still carried.

Q. That is Ethel's and Lucy's?

A. Ethel's and Lucy's are still carried.

Q. Is it your understanding that they still own their claims?

A. It is.

Q. And that these deeds were simply held, or are simply held as security for advances made by the company?

A. That is right, yes sir.

Q. Now at the time this arrangement was carried on between Mr. Dixon, the present manager, and Mr. Kelly, when he reported to him the condition under which these deeds were held, were you present at that time?

A. I was present when Mr. Kelly talked to Mr. Dixon, but I was not present when Mr. Kelly talked to Mr. La Raut. Although Mr. Kelly did come to interview me after Mr. La Raut first approached him.

Q. Now, you may state what was said there between Mr. Kelly, Mr. Dixon and yourself in explaining to Mr. Dixon how the deeds for these claims were taken, and the condition of these claims and what was said and done there at the time?

A. Well, I made such statements as would put them in possession of the facts that they might know exactly my relation to the transaction, and the understanding with the La Rauts, so that he might deal with them as I probably would have done if I had been in a similar place, so that he would be in possession of what ever information I had and could deal with him as he thought proper. I simply meant to put him in possession of all the facts.

Q. Did you state them as you have stated them here in your testimony?

A. I did. I do not mean that I measured every word. But so far as the facts are substantially concerned, I stated to him then as I have now in answer to your question.

Q. This Mrs. Applestone already referred to tes-

tified that she saw there in her mother's possession, forms of questions and answers written out as coming from the land office, or something to that effect, and testified that her mother told her that you had sent them to them, or something to that effect. I will ask you to state whether or not you did send them any such blanks with the answers filled out, or anything of that kind?

A. I did not. Her statement is the only knowledge I have of that.

Q. Do you know what the fact is as to whether those blank forms are given out to people who are contemplating filing on claims?

A. I know that it was a common practice for people to learn what was necessary to testify to in making the ordinary proof.

Q. I will ask you to state what the facts are Mr. Booth if you know, as to the manner in which these claims were entered on the books, and whether or not they were entered as a separate batch of claims, —separately from the other lands of the company, or how they were carried, on the books of the company.

A. They were meant to be carried distinct from the others, so that we might know the advances that were made to the different individuals. In fact they were different from any other claims or groups of claims. They were taken by relatives, or by old employes of the company, almost without exception, and the purpose of entering them the way they were, was that we might readily ascertain the amounts that had been advanced, so that we could properly settle with

them. Mr. Dunbar was instructed so far as the La Raut claims were concerned to keep all the items so that they might be charged into my account, or handled as I might direct.

Q. I will ask you to state Mr. Booth if you have knowledge on the subject what claims in that section of the country, timber claims such as these were, were worth at that time—that is at the time they were taken and filed upon by these parties and for a number of years afterwards?

A. The section of country where these claims were located, was not tributary to our milling operations, and we went there as an investement, with a view of selling the claims—selling the land. Our first purchase in that locality was from Jones and Cook. They had gotten together the best lands on the Brumbaugh, select land purchasing from the railroad company and from settlers and we purchased in round numbers fifteen thousand acres from them at \$5.25 an acre, but at the same time on the opposite side of the river and tributary to our Saginaw operations, we purchased land for \$3.50 an acre. The claims that I referred to here were not considered as good as the average claims in there, and had not been considered worth while for Mr. Jones and Mr. Cook when they selected their claims,—that is to say, they were on the fringe,—they were considered young growth, and at that time not considered to be worth very much, and if we had purchased them, we would not have given anything like five, six or seven hundred dollars for them as we were giving at that time for

other claims that were located better than these, so far as it relates to convenience to our plant was concerned.

Q. Was that the full, fair price for them at that time?

A. It was, there was no market value except as we had established it. That corresponds with the prices that were given and in existence at that time.

Cross-Examination.

(Questions by Mr. JOHN McCOURT.)

Q. When did you become manager of the Booth-Kelly Lumber Company?

A. I was elected in October, 1899, and took charge on November the first following.

Q. And continued to be manager up to February, the first, 1907?

A. Up until February, 1907.

Q. During all that time John Kelly looked after the purchasing of timber for your company?

A. I cannot say that.

Q. Most all of the time?

A. During the formative period of our company when we were active in buying that work was assigned to Mr. Kelly.

Q. When were you active in buying?

A. From the time of the organization of the company until several years afterwards.

Q. You were active until up to 1904 or 1905?

A. We purchased considerable continually, but not actively for a couple of years or so back.

Q. When did you buy that Jones timber for \$5.25

an acre?

A. In 1901.

Q. What time in 1901?

A. January.

Q. When did you buy timber for \$3.50?

A. About the same time.

Q. How much had that timber increased from 1901 to 1902?

A. Nothing of any consequence.

Q. The market had grown stiffer, had it not?

A. I think not.

Q. Up to 1904, had there been any material increase in the value of timber there?

A. It is hard to say, the relative value in any given years, but it has been generally toning up, and of course it is worth more now.

Q. Well, those claims that were on the fringe, would they have been worth any more than \$5.25 an acre in 1904?

A. It is hard for me to recollect the purchases, but not of any consequence. I do not think we considered them desirable. I think they were young growth, and not clear, in consequence, and were not very big claims. They had been reported to me as being about four million claims and as we cruised timber then, of course, it was not very large. As we cruise timber now, of course, they would produce more.

Q. Now, you want to convey the idea that your purpose in assisting these claimants in getting these claims, was to aid them somewhat in a financial way?

A. I did it to aid them.

Q. That was your purpose in doing that?

A. Yes.

Q. And that was the intention of the Booth-Kelly Lumber Company to carry that out was it not?

A. Yes.

Q. None of these items were ever charged against you?

A. No.

Q. You never were asked by the company for an item advanced?

A. I was not, I simply guaranteed the account.

Q. You did however, tell Mr. Dunbar that this was to be charged to you?

A. Yes.

Q. Why did not he charge it to you?

A. Because the company agreed to carry it under my guarantee.

Q. You say that was in 1907, that was five years afterwards.

A. I did not say that that was in 1907.

Q. It was 1907 that you went out as manager?

A. Yes.

Q. And it was in 1907 that these new deeds were given.

A. The deeds were taken to me as security for the money advanced, and it was taken in my name as security, and it was taken by the company as security in 1907.

Q. Was not the company carrying the account when you took the deeds?

A. It was. It was charged to the individuals that they had advanced the money to.

Q. How did it come that you carried the deeds in your name?

A. Because I was guarantor for the money.

Q. What was there on the books to show that you were guarantor?

A. The books do not show that I was.

Q. There was nothing that shows that you had any interest in any of these things at all?

A. Not that I know of.

Q. You have examined them?

A. I have not examined them.

Q. Well, you understand that they do not show any connection between you and these lands?

A. I understand that they were charged to the individuals—the money was kept so that it could be charged to my account.

Q. But these claims were carried into the stumpage account, and the stumpage account was charged with these amounts without any indication or reference to you whatever?

A. My understanding is, and it is a fact, that they were charged directly to the individuals until such time as it was arranged that the company should carry the accounts, that is to say—the amount which had been advanced was charged to the stumpage account.

Q. I call you attention to the stumpage account of the company, and I ask you to note the items there, and see if it was not charged into the stumpage ac-

count on the very day the hundred dollars was paid, and the deed to these claims was made to you?

A. If you will refer to each name, and follow it out you will see what it shows.

Q. Don't the stumpage account show that S. A. La Raut, Alice La Raut, Ethel La Raut and Lucy La Raut's land was carried into the stumpage account under that date in 1902 (showing)?

A. It shows that it was charged to stumpage in July, 1902.

Q. July 31st.

A. July 31st.

Q. Upon that day the parties were paid \$100.00 each as shown by the account?

A. Some of them were, and some of them were paid more.

Q. Which ones were paid more than \$100.00?

A. Well, I notice that S. A. La Raut is charged \$134.50 on that day.

Q. Do you recollect what that \$34.50 was for?

A. No I do not.

Q. And the others were all paid a hundred dollars?

A. I do not recall any of the items of payments because it was done by Mr. Dunbar under my directions.

Q. Those lands then were carried into the stumpage account immediately were they not, upon payment of this hundred dollars?

A. They were carried into the stumpage account at the time the arrangement was made that the com-

pany should carry them.

Q. When was that arrangement made—when the company paid the hundred dollars?

A. I do not know whether it was prior to that, I assume that it was about that time.

Q. Why were the deeds made to you if it was prior to that?

A. The deeds were made to me, as I have testified to secure me for the money that I intended to advance them at the time I gave the directions.

Q. I understand that the company took your place did it not?

A. They did.

Q. When they took your place, were you not willing that they should take your security?

A. They took my security later.

Q. Was there any security to the company except the land?

A. I had made a statement to John Kelly and Mr. Dixon, that I would be responsible.

Q. Nothing was put upon record?

A. It was not necessary.

Q. Was the land sufficient security without your verbal guaranty?

A. It was not, because the company did not know what the parties would do with their claims.

Q. Why did you advance them a hundred dollars on the day you took them over?

A. Simply to aid them just as I have advanced them other funds at other times.

Q. Why did you conclude this arrangement with

Stephen La Raut?

A. I never concluded it with Stephen La Raut, Mr. George Kelly concluded it.

Q. Mr. George Kelly understood it?

A. Understood what?

Q. That Stephen had some claim on the land?

A. He understood that the claim belonged to Stephen La Raut, like all the other claims that had been assigned to me as mortgages.

Q. What was Stephen La Raut's claim worth?

A. I do not know what they were worth in there. Of course, I have my own idea that they were worth very little.

Q. What is your idea?

A. I would not want to buy it for over fifteen or twenty cents per thousand feet. In fact, I did not care to buy at all in there, as the operations of the company in there for a number of years have been at a loss, and there is no market for their timber, and it has been so for a number of years, the company has been operating at a loss.

Q. Yet Stephen La Raut's claim would be estimated at anywhere in the neighborhood of two thousand dollars in value?

A. It would not come any where near that.

Q. It would not?

A. No.

Q. Do you remember the Roche and Dunbar claims in there?

A. I do not.

Q. Do you know anything about them?

A. Well, I do not know my recollection so far as that was concerned is only in a general way, that they are all in the same group of claims. As I said they were taken on the fringe around the land that we purchased, and they were a lower grade than the average grade of claims that we secured.

Q. Claims now in there are worth something more than they were in 1904, are they not?

A. Yes.

Q. How much per cent more?

A. Well I have not had anything to do with the purchasing since I went out.

Q. You kept a close tab on the company's business and you must have formed some idea of the value of timber, what is your estimate?

A. I have given you my idea of value.

Q. What was the value, or what is the value in excess of what it was in 1904?

A. Well, since 1904, I would say that it has raised in a general way fifty per cent, probably more than that.

Q. Now omitting the idea of time, from the claim of S. A. La Raut, you paid him on July 31st, 1902, \$100.00 over and above the amount the land had cost, and on February the third, 1910, the company paid him fifty dollars more for the land, making \$150.00 for this claim, and I notice in 1904, in this same locality that you paid Dunbar and Roche thirteen hundred dollars each for their claims,—now in what way were you helping La Raut there more than you were other people, that being the state of the records?

A. We helped him to the extent of the money that he received for his claims.

Q. \$150.00?

A. Whatever the records show, and if he had held his claim as I desired him to do, and recommended him to do, he might have gotten a great deal more out of it.

Q. How is it that you were willing to pay Roche and Dunbar each thirteen hundred dollars for their claims, and you were only willing to give Stephen La Raut whom you wanted to help, five hundred and fifty dollars, or five hundred and sixty dollars for his claim counting the government price?

A. I did not buy Mr. La Raut's claim.

Q. I understand that you informed Mr. George Kelly, and he bought Mr. La Raut's claim?

A. I informed him as to what I had said to Mr. La Raut, and that I had advised him not to sell. I had nothing to do with the purchase of the claim, and I never knew until this case came up, what was paid to Dunbar and Roche for their claims.

Q. You say that you never talked with La Raut until 1908 about his claim?

A. It was the time that I was being tried.

Q. Did not you talk to Mr. La Raut about 1905 about the time that he was down here before the Grand Jury?

A. I did not talk to him until the time I stated.

Q. You did not talk to him at the time he was before the Grand Jury?

A. I have no recollection of it.

Q. Did not you talk to him last December at the time the Special Agent was up there?

A. I did not. I did not know the Special Agent was there. I have talked to him a number of times about other questions, since that has come up.

Q. Since 1908?

A. Yes, because he has frequently talked about selling out and going to Canada, and he also talked about purchasing my home near Saginaw, which I offered to help him to secure. And I helped him with five hundred dollars.

Q. Is that secured?

A. No, it is not secured, he has no way of securing it.

Q. This purchase that the company made from La Raut, did that cancel the debt by the company taking the land?

A. It paid the cost of the land.

Q. All was to be cancelled, that was the final disposition of it?

A. When he sold the claim he was to repay the company with interest, and if the company should purchase the claim he was to get the purchase price.

Q. If that is the case, do you know why the parties were not charged with these particular amounts that are entered on the books?

A. It was not necessary.

Q. It would be the ordinary thing to do?

A. Not necessarily,—any method by which we could ascertain the facts would be satisfactory and proper.

Q. Well, it would be necessary for yourself or Mr. Kelly or some of you people that had got this little understanding about this money to be in control of the company at the time of the settlement, or else there would be nothing to show the actual condition, would there?

A. Well, it would be easily understood, the land is all assessed.

Q. Does not the assessor up there carry a charge against each tract?

A. I do not know what the assessment shows, but I presume that they are assessed against the land at an average price per acre, and it would be just the same if a claim has four million on it, as if it had ten million on it. They were in the Brumbaugh District and lands in that district would be assessed at an average price. That record is always obtainable and easy to get at.

Q. I call your attention to another matter in connection with this account,—that there is charged against the Brumbaugh land claim, a large number of small items amounting in the aggregate to \$301.25, or something of that kind,—and you will notice that no account was taken against any particular claim.

A. Do you mean to ask why it was not segregated and charged to these claims?

Q. In connection with your testimony that they were carried in that manner to show what was charged against each claim?

A. Because it could be easily ascertained.

Q. What was there in the account to show for

instance, take the Ethel La Raut account?

A. The description of the land shows what it was absolutely.

Q. You would have to go to the stumpage account?

A. You would go to this account.

Q. Why did you carry a stumpage account at all? If they were not the company's lands, and the company had nothing to do with them, except to hold a mortgage on them?

A. Because they furnished the money, and they had to carry them in some account.

Q. Why did not they carry them in the individual account, instead of in the stumpage account?

A. They would have to carry them some place in the ledger, and that was only a question of book-keeping.

Q. If the company had bought the land and had taken a deed for it, would it not appear in the books the same way as it does?

A. No, if we had purchased it, there would be only one transaction, showing the claim purchased, the price paid, whether one thousand, two thousand dollars, or five hundred dollars, and a charge made to stumpage account, but these several items are carried there so that we could ascertain readily the charge against the individual in determining what might be due at any future time.

Q. How did it come that you were carrying Roche and Dunbar?

A. I did not make any arrangement with Mr.

Dunbar, I had nothing to do with the Roche and Dunbar claims.

Q. Is it not a fact that all of the employes of the company that took up claims and later sold out to the company were carried in just exactly the same manner?

A. It is not. That was the arrangement that related to those claims and to none other.

Q. Do not the books show other transactions that were carried in that manner?

A. What time?

Q. About this time in 1901.

A. No. We also rule an account down whenever we can, because it is necessary to reduce accounts to the minimum.

Q. And there is no single entry in this account after that date?

A. No, they are carried in the way that I have designated, so that every item could be easily ascertained because they are in there.

Q. What I am getting at is the fact that the account of S. A. La Raut, or Ethel La Raut, or Lucy La Raut do not show any entries since 1902, when those deeds were taken.

A. Well, it does not, because there was no account with them.

Q. But you carried those entries over and put them into the stumpage account?

A. It shows just the same. Just exactly the exact status, and any method that did that was satisfactory.

Q. If you were carrying an account with Ethel La Raut since 1902 in the books of the company and doing business with her, you would carry an account under her name would you not, ordinarily?

A. I said any method that would show the items would be satisfactory, whatever that might be.

Q. And you carried them in stumpage?

A. They were carried in stumpage.

Q. And that would be the same as though they belonged to the company?

A. No, the company would not have had any of those auxiliary or subsidiary accounts if they had purchased the lands outright. It would simply recite that a certain tract of land was bought and certain price paid, and there would be one entry, and there would be no record made of any such things as we have there, taxes that we have paid on the land, Land Office fees and money advanced for the purchase price.

Q. There is nothing of that kind here.

A. There is.

Q. After 1902?

A. Well, they would not enter them twice. They wouldn't carry them on beyond the time when they were paid.

Q. I understand about that. I am showing to you that if you had bought this land outright as the government claims you did, you would have made exactly the same entries as you have made, would you not?

A. I said not.

Q. What is there that you would not have done?

A. If we had purchased them outright, we would have made simply one transaction in the book, describing the lands, the price paid for them, and would simply have carried them into the stumpage account, but if the company had agreed to carry the land, until they should finally be disposed of, it would be necessary for them in settlement to know exactly what the total cost was, and how they had accrued and for that reason the entries were made as they are.

Q. Did you ever tell any of the LaRauts, Stephen, Alice, Ethel, or Lucy what those lands were worth?

A. I never have.

Q. What they could get for them?

A. I never have.

Q. They have never asked you?

A. They never have. I refer to Lucy and Ethel, and I never have as to Stephen. He came to me about the time I was retiring as to the selling of his claim.

Q. Did you tell Stephen LaRaut what his claim was worth?

A. I did not.

Q. In 1910 when he came to you, when he wanted to go to Canada, did you tell him what his claim was worth?

A. I did not.

Q. Did you give him any information?

A. I simply referred him to Mr. Kelly.

Q. You did not tell him a single thing about his

claim, or give him any information about it at all?

A. I did not.

Q. Did you tell him he could get more money?

A. I did not. I simply referred him to Mr. Kelly.

Q. You were trying to assist him, and help him get a start, and you thought it would be all right to get this claim for \$150.00?

A. I did not know what he would sell it for.

Q. It was about this time that you talked to George Kelly?

A. About the time I retired?

Q. No, in February 1907.

A. No, I talked to Mr. Kelly at the time he and Mr. Dixon were together.

Q. When was that?

A. A year ago.

Q. What did you say to him?

A. I recited the circumstances under which these claims were taken, and told them what the facts were, so they might be in position to negotiate with Mr. Stephen LaRaut for his claim, for at the time Mr. LaRaut was seeking to sell his claim.

Q. Did you tell the same thing about Ethel and Lucy LaRaut's claims?

A. I did.

Q. Tell him all about it?

A. Yes.

Q. Can you tell how it comes then, a few months later he swore to the answer in this case, and claimed absolute ownership of those claims?

A. I do not know anything about what he swore

to, I know what statements I made.

Q. Did you see this answer?

A. I did not.

Q. Never have?

A. No, sir.

Q. You do not know how he happened to forget about those times that you told him?

A. I do not know.

Q. You are very much interested in the case?

A. Well, no.

Q. You were at the time you were sued?

A. Not to any consequence, my interest is very slight, I own something like  $2\frac{1}{2}$  per cent. or 3 per cent. of the stock of the company.

Q. You were more interested in the charge contained in the complaint that you had been in fraudulent transactions than you were in the financial side of the case?

A. No I was not particularly concerned about that.

Q. You never did know until the question was asked you that Dixon had sworn that the company had the absolute ownership of the land?

A. I did not know what he had sworn to as I told you before.

Recess until one o'clock.

Afternoon session.

Present same parties as before.

R. A. Booth resumes the stand, cross-examination continued by Mr. McCourt.

Q. What did you do with those deeds from the

LaRaut people that you say were delivered to you or made in your name in July 1902?

A. They were taken up as I remember it, and destroyed, and the other deeds were taken.

Q. When were they destroyed?

A. I do not remember the time.

Q. With reference to the time the other deeds were made?

A. I cannot say.

Q. How long before?

A. I cannot say.

Q. What is your best impression as to the length of time it was?

A. I have not tried to fix any of those things in mind, I only know that they were taken up.

Q. What was done with them during the time they were in existence, where were they kept?

A. In my desk I think.

Q. Where?

A. In my office.

Q. Of the Booth-Kelly Lumber Company?

A. Yes sir, the office of the manager where all my papers were kept.

Q. And where the deeds of the company were kept.

A. The deeds of the company were kept in the vault of the company.

Q. Were not these deeds kept in the vault too?

A. My recollection is that they were kept in my desk.

Q. What kind of a desk did you have?

A. An ordinary roll-top oak desk.

Q. Why did not you deliver them to the company? And have them kept on file the same as the other deeds inasmuch as the company had assumed your place?

A. There was no occasion to do that, I would protect the company and save it harmless, I was the manager.

Q. There was nothing on the records of the company to show that you were responsible for these liabilities that the company had assumed?

A. There was no occasion for that, I would protect the company.

Q. There was nothing in the books of the company to show that you had anything to do with these claims?

A. It was understood.

Q. Have you any recollection of the payment of \$25.00 each to Ethel and Lucy LaRaut in 1907?

A. I have no recollection of when it was paid.

Q. You remember that they were paid something of that kind?

A. Nothing more than what I noticed by the record. I know they could have had that amount if they had called for it.

Q. Did they ever call for any other money than that twenty-five dollars?

A. So far as my knowledge goes, they were never refused any money.

Q. Didn't you furnish them with some money during that time?

A. On their claims?

Q. No, any old way?

A. I furnished money to Lucy, yes.

Q. How much?

A. Frequently—I gave her fifty dollars twice that I remember of.

Q. You did not charge that against her claim?

A. No.

Q. And did you furnish Ethel any?

A. Ethel was in our employ, and did not require any, and I have no recollection of doing it. She came into the employ of the company about that time, or prior to the time that she took her claim, and of course, had a salary, and Lucy was home on the farm.

Q. How does it come that you did not make any charge against her for these fifty dollars and yet you charge her this little dinkey sum of twenty-five dollars?

A. Because the company advanced that money. It was their money, and not mine. I have given her money and given her clothing and articles at different times and boarded her and helped to educate her and sent her to business college since she has been there.

Q. You nver made any entry of that in the books.

A. Not in the books, I gave her those things, she lived there.

Q. How did it come that when she took a timber claim, she was charged with these little items?

A. Because the money was furnished her.

Q. What was the purpose—why didn't you furnish

her the sum of twenty five dollars and let her take the claim herself, and not burden the company with it?

A. I do not see that there was any occasion for me to do it.

Q. I notice here in this account, that you have her charged up with an item of eight dollars, an item of fifty cents for breakfast and supper, and seventy-two cents fare, and lunch for Ethel and Lucy eighty cents. —how did it come that you began to keep such close tab on those items when you were so generous with the other items?

A. Those related to their claims, and a record was kept of those things so that in the future if the claim was sold, we would have a memorandum. They had nothing to do with what I had given her.

Q. Well the company had the Dunbar and the Jordon claim, and the Roche claim and the Brumbaugh claim, they were in the same locality?

A. That is my understanding.

Q. About the same times that these transactions were being conducted?

A. I do not remember the date, because it is of record, but they had nothing to do with the La Raut claims.

Q. Well, do you recollect that you advanced money to Stephen and Alice LaRaut during this time?

A. Do you mean money to be returned, or did I make them a gift?

Q. To make them a gift, or let them have money.

or aid them.

A. Nothing except in the way of holiday times, and such things as that, we have always been generous in making them gifts, I do not recall anything beyond that. I helped Stephen at one time, as I now recall, when he got pressed on an old account, I let him have five hundred dollars, or something like that.

Q. Stephen LaRaut worked for you also about that time?

A. He worked for the company, yes.

Q. How long did he continue working for the company?

A. Until he went to Canada.

Q. In 1910?

A. Yes sir.

Q. When did you first tell Dunbar to advance these moneys with reference to the time the claims were taken?

A. Probably about that time.

Q. Did you tell him what the arrangements were?

A. Yes, I told him, that I was to advance them the money, and to let them have what was wanted, and it was to be charged to me, and to keep a proper record of it.

Q. Did it ever occur to you to inquire what charges had been made against you on the books?

A. I knew of the payment that had been made of a hundred dollars, and of course I had general knowledge of about what the cost of the claims would be.

Q. Did you direct him to pay him one hundred dollars?

A. I presume I did, or whatever sum it would be. He would not have done it without my authority, but he would have felt perfectly free to pay them under the general directions that I had given him.

Q. You did not tell him when you told him first about this, that they were to receive one hundred dollars right after they made final proof?

A. I do not remember telling him any amount at all.

Q. Not when they gave the deed?

A. No.

Q. When you directed him to pay the hundred dollars, did you tell him that you had taken a deed?

A. I do not know.

Q. He did not make any entry in the book that the deeds had been taken to you for that \$100.00?

A. I do not know that there was any occasion to make it, I do not know what kind of an entry he would make.

Q. Why were those claims called the "Brumbaugh Land Claims?"

A. Because they were on the Brumbaugh river.

Q. Is that a river or creek?

A. Well, it is marked Brumbaugh River on the map. It is not a large stream. It is probably a tributary of the Row River, which is a tributary of the Willamette. It is a stream where some of our timber at that time was located and we knew it always as the Brumbaugh Territory.

Q. Brumbaugh was a cruiser out there at that

time?

A. I do not think this creek or river was named for him it was some relative,—his father probably.

Q. Daniel Brumbaugh was a cruiser out there at that time?

A. Yes sir, before and since,—very generally in our employ.

Q. Why did you not put those deeds on record Mr. Booth that you had there, that you claim were made in your name?

A. There was no occasion to put them on record that I can see. The later deeds were recorded for the reason as I have stated, that we were afraid of a judgment against Stephen.

Q. Were you afraid of a judgment against Ethel, Lucy and Alice?

A. Against Alice, yes, but we thought to treat them all alike.

Q. You recorded them all at the same time?

A. That I do not know, whatever the record shows will be the fact.

Q. Now, do you know about a special agent being up there last December looking into these cases?

A. Last month do you mean?

Q. Last December, a year ago.

A. Well, I do not know—I know that special agents have been there at different times, they have been in our office, and I have talked with them about these claims at different times, and have shown them our records,—I do remember just the time.

Q. You never showed them this record, that is in

evidence here?

A. That was only just made.

Q. Just made, but your books contain those items?

A. I showed them the plats of our land, and the condition of the title.

Q. You never offered to show the agent these accounts?

A. I showed them just what they called for.

Q. You did not volunteer anything?

A. Well, I might possibly have done so, I do not recollect.

Q. Didn't you in December, 1909, have a conference with Mr. Dixon of your company and your attorney, and the LaRaut girls, and Stephen and Alice in relation to the inquiry being made about them by special agent Lavin?

A. I cannot say. I have talked but very little with him about those claims.

Q. Did not you determine at that time, to have each one of them write the special agent for him to submit a list of questions and that they would write to their attorney about it?

A. I did no.

Q. You were very much interested in those La Raut claims, in as much as you had guaranteed the company?

A. I had no special reason, I know that the company had the deeds and that they were perfectly safe.

Q. Did not you talk with LaRaut and try to enter

into an understanding with him that he should tell the special agent that your wife had furnished the money?

A. No. My wife never furnished any money, and I never told any one that she did.

Q. You never told LaRaut to tell the special agent that?

A. What La Raut do you refer to?

Q. Stephen?

A. No, nor no other LaRaut.

Re-Direct Examination.

Questions by Mr. A. H. TANNER.

Q. Some reference was made in the testimony to some trial that you had here, some time in 1908, I believe it was,—what was the result of the trial?

A. I was acquitted.

Q. Had your trial in that matter any connection with these claims?

A. None whatever.

Q. Now, you stated that in the matter of these LaRaut claims that somebody else looked after them,—who did you refer to?

A. Which claims have you in mind?

Q. I mean the other claims on Brumbaugh?

A. Mr. John Kelly looked after the Brumbaugh claims,—the Dunbar, the Roche claim, and the Jordan claim.

Q. You never had anything to do with those claims yourself personally?

A. Nothing whatever.

(Witness excused.)

H. A. DUNBAR is called as a witness for the defendant, and being first duly sworn testifies as follows:

Direct Examination.

Questions by A. H. TANNER.

Q. State your name, age, residence and occupation?

A. H. A. Dunbar; age thirty-four; secretary of the Booth Kelly Lumber Co., residence Eugene, Oregon.

Q. How long have you been in the employ of the Booth Kelly Lumber Company?

A. Since September the 9th, 1899.

Q. In what capacity?

A. Bookkeeper.

Q. Have you had any official position in the company?

A. I have for the last year,—secretary and treasurer.

Q. Prior to that time did you have?

A. No, no official position,—I was considered the cashier of the company.

Q. Your principal duties then, and at all times has been that of bookkeeper?

A. Bookkeeper and cashier.

Q. Do you know Mr. Thomas Roche?

A. Yes sir.

Q. Has he been in the employ of the company during most of that time?

A. Yes. I cannot say for sure just when he came to the company, but for the last ten years.

Q. Has he been in the same office with you?

A. Yes sir.

Q. You may state the circumstances under which you took up a timber claim in the Brumbaugh Creek country which has been referred to in the testimony in this case, and why you took it up, and all about it.

A. Well, I had had in mind for some time the proposition of using my timber rights. I mentioned it to Mr. John Kelly some time before that, and at different times, that I would like to take up a timber claim if he found one he would advise me of it, and he did, and I took up the claim and filed on it, and made proof.

Q. Did you go and look at the claim before you filed on it?

A. I did.

Q. Who did you go with?

A. With Mr. D. H. Brumbaugh, Ethel and Lucy LaRaut, and also with Mr. Robinson.

Q. You all went out together to look at the claims, were the girls going to take claims also?

A. That was my understanding that they were.

Q. They went out with you for the purpose of selecting claims did they?

A. Yes sir.

Q. And then did you go to Roseburg, and file on your claim and subsequently prove up on your claim?

A. Yes sir.

Q. Who went with you to Roseburg to prove up

on your claim?

A. D. H. Brumbaugh and Robinson, I think. I think they were my witnesses.

Q. Did the girls go?

A. They were there at the time. I was one of their witnesses.

Q. Now, at the time that you filed on your claim, did you take it for your own benefit?

A. I did.

Q. For the purpose of making out of it, what you could for yourself?

A. Yes sir.

Q. Did you take the claim for the purpose of selling it when you saw fit for what you could get out of it?

A. I took it for my own personal benefit.

Q. Did you prior to filing on your claim, promise anybody to sell it to them, or deed it to them?

A. I did not.

Q. Had you made any contract or signed any paper or made any arrangement, either verbally or otherwise before you took up your claims, or before you proved up on it to sell it to anybody else?

A. I had not.

Q. Or to sell any interest in it, or the timber on it?

A. No sir.

Q. Was there any other person, firm or corporation interested with you? In any way in the timber on this claim or in the claim?

A. No sir.

Q. What arrangement did you have if any with the Booth-Kelly Lumber Company, or Mr. Kelly as to advances to pay for the land and pay the expenses?

A. I was permitted to charge the amount to my account.

Q. And did you do so?

A. I did.

Q. What was the practice or custom with the company at that time with regard to your drawing on your account or over-drawing your account at times?

A. My account was quite often over-drawn at times. The way the account was kept, was at the end of each month, my salary was credited to my account, and I charged against it such money as I drew out, and I was permitted at different times to over-draw my account.

Q. Did that apply to other officers of the company? The other employes in the office of the company?

A. Yes, the same rule applied to all employes of the company.

Q. Did the same condition apply with reference to Mr. Roche's account?

A. Yes sir.

Q. Now, when did you sell that claim to the company, the Booth-Kelly Lumber Company, if you did sell it to them?

A. It was some time in November, 1904, I do not remember just the date.

Q. Did you make a deed to the company about that time?

A. The deed was some time in November, yes.

Q. How much did you get for that claim?

A. Thirteen hundred dollars.

Q. How was that paid to you?

A. Well, I took credit for the amount and just drew it out as I needed the money.

Q. Did that include the expense money and costs of the land that had been advanced, and which you had charged yourself with?

A. I charged myself with the amount when I drew it out.

Q. Did this thirteen hundred include what you had paid out for the land?

A. Well, I cannot say exactly, that it included all, because of the expenses were charged to this group of Brumbaugh land claims.

Q. Now at the time that Miss Ethel LaRaut and Lucy LaRaut went to Roseburg, you say that you went along with them?

A. Yes, sir.

Q. State under whose directions you did that if you did it under the directions of any one.

A. Well, I was instructed I think by Mr. Booth, who was manager at that time, and I went as one of their witnesses, I think the record will show that I was a witness for them.

Q. Were you instructed to advise and assist them in making their filing and proof?

A. I assisted them, yes sir.

Q. Did you take the expense money, or who had the expense money at that time?

A. I had it.

Q. How was that furnished to you, how did you get that?

A. Well, I simply took it,—I have authority to take the money for the expenses, and I took it.

Q. Do you remember what shape it was in, whether in the shape of a draft or check, or money when the final proof was made?

A. It was in the form of a draft.

Q. Did you open this account here, the transcript of which is introduced in evidence marked Government's Exhibit "K" in relation to these lands?

A. Yes sir.

Q. You may state how you come to open that account, and why it was opened in the manner in which it is in the books of the company?

A. Mr. Booth wanted me to keep the account separate from any other man's account.

Q. Was it entered in a separate account?

A. It was.

Q. Separate from the other accounts of the company?

A. Yes sir.

Q. Did you make these entries of the expenses that are charged up there?

A. I cannot say that I made all of them, I think I did, I had charge of the money paid out.

Q. Were you instructed to keep an itemized account of it?

A. I was instructed to keep the account so that they would know what the expenses were on these claims.

Q. What the expenses were, and what it was paid out for, and so on?

A. Yes sir.

Q. Do you recall Mr. Dunbar, any conversation with Mr. Booth, the manager of the company, about the time these claims were filed upon as to those amounts being charged to him, or who was to be responsible for them,—in regard to the LaRaut claims?

A. Mr. Booth told me that he was to be responsible for the claims, and wanted me to keep the account separate.

Q. That was the reason that they were entered up in this way?

A. That was the reason.

Q. Do you know about these subsequent payments that were made to Ethel LaRaut and Lucy LaRaut and Stephen A. LaRaut, do you know anything about that?

A. Nothing further than that I made the payments.

Q. Upon whose instructions?

A. Well it depends upon what payments you refer to, and the year. It would be under the instructions of the manager whoever it was at the time the payments were made.

Q. You only drew checks under instructions of the manager in charge of the business?

A. Well, from the manager or Mr. John Kelly,

he was over me and he had authority.

Q. Somebody in authority above you?

A. Yes sir.

Q. In your associations with Ethel LaRaut and Lucy LaRaut, and in going up and examining this land, and going to Roseburg and filing on it, and making final proof, etc., was there ever any conversation or statement to indicate that they were taking this land in any other way than for their own benefit?

A. No sir.

Q. Was anything ever said that they were taking them for the Booth-Kelly Lumber Company in consideration of one hundred dollars, or anything of that kind?

A. No sir.

#### Cross Examination.

Questions by Mr. JOHN McCOURT.

Q. How did you happen to pay them one hundred dollars apiece on July 31st, 1902?

A. It was paid over to them by authority of some one, I do not remember who.

Q. You do not remember who told you?

A. I presume it was the manager, it would be somebody in authority.

Q. Did you pay yourself one hundred dollars on your claim at that time?

A. No sir.

Q. Did you have any transaction with regard to your claim at that time with the company?

A. I charged myself with four hundred dollars at the time I proved up.

Q. Did you credit yourself with anything?

A. I did.

Q. How much?

A. Five hundred dollars.

Q. Why did you credit yourself with five hundred dollars?

A. Because I had some expenses, and I was making a loan from the company.

Q. What did you take one hundred more than you used up for?

A. Simply to off-set my expenses and the amount is there charged.

Q. You got one hundred dollars at that time more than your expenses?

A. I took credit for five hundred dollars.

Q. You got five hundred dollars over and above your expenses?

A. My account shows what I got.

Q. You got one hundred dollars?

A. Yes.

Q. You gave a deed at that time?

A. No sir.

Q. Did not you give a deed to the Booth-Kelly Lumber Company?

A. No sir.

Q. You did not give a deed at the same time as these other people?

A. No sir.

Q. But you got one hundred dollars?

A. Yes.

Q. What authority did you have for taking one hundred dollars more than the land cost you?

A. From somebody who had authority.

Q. Who gave you authority to take that money?

A. I presume Mr. John Kelly.

Q. What did he give you the hundred dollars for?

A. To off-set the charge that I had made against my account.

Q. Yes, you were off-setting it by one hundred dollars over what you had charged, what I want to know is about this hundred dollars?

A. Well, it was my own account, and I had my own arrangement.

Q. You borrowed one hundred dollars?

A. Yes, if you want to consider it that way.

Q. What security did you give?

A. I gave no security.

Q. Why did not you charge it to your account, and not charge it to the land claim?

A. I did charge four hundred dollars to my account, and I charged five hundred dollars to stumpage account.

Q. The five hundred dollars you were paid?

A. Yes.

Q. You credited stumpage?

A. I charged stumpage and credited my own account.

Q. And you made one hundred dollars out of the transaction?

A. Yes. This five hundred dollars was simply a

loan on the land.

Q. What did you give the company for that loan?

A. Nothing.

Q. You did not deed them the land?

A. No.

Q. They had no security?

A. No.

Q. Not until 1904 when you made the deed?

A. No.

Q. You carried it to the stumpage account in 1902?

A. Yes.

Q. Why did you carry it into the stumpage account?

A. Simply because it was a loan on the land.

Q. You did not turn the land over at that time?

A. No, I did not, that was in 1904.

Q. What did you get it into the stumpage account for?

A. I have answered that question three or four times, it was a loan on the land.

Q. Did you charge it into the stumpage account you over-drew your account fifty dollars?

A. No, sir. The charge is in my account.

Q. The charge is in your account without reference to the land.

A. Yes sir.

Q. You say this hundred dollars had no relation to the land?

A. It was the loan of five hundred dollars that I got, and I took credit on my account for \$500.00, that

was a loan, and I charged my account the same as I always did before, and have always done since.

Q. But what I am getting at is, why did that transaction of one hundred dollars require you to charge the stumpage account of the company five hundred dollars?

A. There was no one hundred dollars mentioned in my account at all.

Q. But there was one hundred dollars?

A. As I say, it was a loan.

Q. It was a loan was it, what for?

A. Five hundred dollars was the amount.

Q. What for?

A. I took it on this land.

Q. Now, did not you charge stumpage account with the entire expense of those Brumbaugh claims?

A. Yes.

Q. You never entered that in your account at all did you?

A. No sir.

Q. Never made any recognition of it in your account?

A. No sir.

Q. So that part of it was not a loan, was it?

A. No sir, that was charged in with the other,—there was these eight claims in a group, and the expenses were where they could be gotten at.

Q. How could the expenses be gotten at in your stumpage account?

A. I think it shows in the Brumbaugh land claims it shows what the expenses were all through.

Q. When did you charge that up to your account?

A. When did I?

Q. Yes.

A. It was not charged to my account.

Q. Never went into your account at all?

A. No.

Q. All you are charged in your account with is four hundred dollars? Which was the purchase price of the land?

A. I am charged with four hundred dollars, and credited with five hundred dollars, and I have taken that out along as I needed it.

Q. When did you next make a charge to your account on this Brumbaugh land claim?

A. That I cannot say, as I said, I charged my account as I drew the money.

Q. Did not you take credit to your account for eight hundred dollars?

A. Yes sir.

Q. And you described the land in it?

A. Yes sir.

Q. And you entered that in your account?

A. When the final payment was made.

Q. In December 1904 you got eight hundred dollars on the land?

A. And gave a deed.

Q. Is it not a fact, that you had given a deed in July 1902, and that that deed was destroyed some time about December, 1904, and you made this new deed after the patent was issued?

A. No sir.

Q. It was not?

A. No sir.

Q. Now what did Booth tell you about these girls getting money for their claims?

A. When he asked me to go to Roseburg and pay the expenses?

Q. He didn't tell you anything about loaning money to help them along?

A. The understanding was that he wanted me to keep the account separate, and that is the reason that the accounts were kept separate.

Q. Did he tell you that he was going to stand good for Jordon's claim too?

A. No sir.

Q. Was he standing good for that?

A. No sir.

Q. How did it come that you kept this separate just the same as you did the others?

A. I did not keep his separate.

Q. And Roche was the same as yours?

A. The same as mine.

Q. Now, when you were keeping these separate, why did not you charge Lucy and Ethel LaRaut with the money that you had paid out for their land?

A. Because the expenses were kept in a separate account. You have the account there.

Q. Yes, but suppose you had been asked what there was against the Lucy LaRaut account, what would you do?

A. I would turn to the account of the Brumbaugh

land claims for the expenses and her account for the money advanced.

Q. Suppose you had had heart-failure, and a new bookkeeper had come, how would he know anything about going to the Brumbaugh land claims?

A. The items are in the book, I assume he would.

Q. Take the Lucy LaRaut account, where is the items in your ledger account showing that Brumbaugh account?

A. There is nothing in that account.

Q. How would anybody know that that account had anything to do with the Brumbaugh land claim?

A. By looking at the stumpage account, where all expenses were kept on the Brumbaugh land claims.

Q. I am assuming that you had had heartfailure and had died, what is there in the records of the company, to show that the Lucy LaRaut account had anything to do with the Brumbaugh land claims?

A. It was in the Brumbaugh land claim account.

Q. How would any one ever know that it was in the Brumbaugh land account?

A. It was in the books. I was not the only one that knew.

Q. You were supposed to keep a set of books that anybody could go to, and find out about it without having to ask anybody?

A. I think so.

Q. This account of Lucy LaRaut does not have anything to do with the account of the Brumbaugh land claim?

A. The expenses of those claims were kept in this

one account.

Q. But there was not any part of it charged to Lucy LaRaut, or Ethel LaRaut, or Stephen LaRaut?

A. I think that shows all.

Q. Your books does not show the account.

A. It shows what there is.

Q. Yet, you had been told to keep them separate, —to keep the Lucy LaRaut and the Ethel LaRaut account separate?

A. Any bookkeeper that understood would know.

Q. You say these Brumbaugh land claims were kept separate from the other claims?

A. Yes.

Q. How?

A. Because the different parties were charged with the money advanced on these claims.

Q. And the other claims that the company got, that was not done?

A. No, it was not done, it was charged to the regular stumpage account.

Q. I wish you would bring me your book, I want to see what the difference it is, how soon can you get that book, so that I can examine your stumpage account?

A. I can get the book for you if you want it, it will take me some time to do it.

Q. How long will it take you to get it here?

A. I do not know, I would have to go to Eugene and get it.

Q. Couldn't you telegraph, or telephone and get it?

A. I presume it might be done.

(It was agreed that the witness should go to Eugene and get the book requested by counsel.)

Q. When you went down there to the land office to make proof, did you take the Jordon, Roche and Brumbaugh draft in your pocket?

A. No sir.

Q. You did not do that?

A. No sir.

Q. You did carry yours and the La Raut Girls'?

A. Yes.

Q. Who paid for Stephen and Alice LaRaut?

A. I do not know.

Q. You did not go down with them?

A. No.

Q. Do you remember the execution of the deeds and the delivrey of the same by the LaRaut girls, and Stephen and Alice LaRaut?

A. I do not.

Q. You do not recall that?

A. No.

Q. Do you remember anything about the Jordon deed?

A. No I do not remember that.

Q. Did you and Roche make a deed at the same time?

A. I think we did, I cannot say for sure, I imagine we did.

Q. I would like to know why it was that you took the Roche claim into the stumpage account on July

31st, 1902.

A. For the same reason that my own was taken.

Q. Why?

A. Because he was an employe of the company.

Q. Then did he get a hundred dollars?

A. He got a loan of five hundred dollars.

Q. How long after he made proof was it that he deeded this land?

A. Well, I cannot say, it was shortly after.

Q. The money had all been advanced long before?

A. It was yes.

Q. And you were charged with four hundred dollars and so was Roche?

A. Yes.

Q. But you gave yourself credit for five hundred dollars, and you got one hundred dollars more than you paid out?

A. That was the agreement that we should have a loan of five hundred dollars.

Q. Who did you have that agreement with?

A. Mr. Kelly was the one that I had the agreement with.

Q. What was this hundred dollars for?

A. You refer to a hundred dollars, there was no hundred dollars, it was simply a loan.

Q. You consider the loan, but you charge yourself with four hundred dollars for the purchase price of the land to the land office?

A. Yes sir it shows there.

Q. And you did not charge yourself at all, and

never did charge yourself with the eight dollars which you was paid by the lumber company? for publishing your advertisement?

A. No.

Q. You never were charged with that?

A. Except as I have explained it there.

Q. You never were charged with seventy-two cents, your fare to Saginaw?

A. No.

Q. Nor with your supper or your breakfast?

A. No sir.

Q. And your dinner on that trip?

A. No.

Q. Nor with your fare back to Eugene?

A. No.

Q. Nor with your fare and expenses going down to Roseburg, and making proof were you?

A. No.

Q. None of those items were ever charged to your account at all?

A. No, they show up in the Brumbaugh land claim account.

Q. They never were charged to your account at all?

A. No.

Q. You never did have to account for those items at all?

A. Nothing further than that you will find them in the Brumbaugh land claim account.

Q. You never did have to account for the ten dollars and fifty cents fee that was paid to the land of-

fice?

A. No.

Q. Nor any other expense in regard to the land?

A. Just in that account.

Q. As a matter of fact, your land cost more than four hundred dollars was a little excess in that?

A. I do not remember.

Q. Now then, when you come to your books about this Roche claim, you never made a charge to his account of the thirty or forty dollars that the company had advanced for expenses and fees?

A. No sir.

Q. But he did get a credit of one hundred dollars in excess of the amount charged to him did not he?

A. He got credit for the loan which he got of five hundred dollars.

Q. What was he taking a loan of five hundred dollars when the outlay was four hundred thirty-four dollars?

A. Simply because no agreement had been made, for what he should get for his land.

Q. Yet, you were going to sell it at that time?

A. There was no agreement.

Q. You intended that the company should have the land?

A. The company would be given the first preference.

Q. They took their preference by carrying the land on their books as their own?

A. No, they did not.

Q. They did not?

A. No, the deeds were not made out.

Q. But the books showed it as company land?

A. The books showed that the company had advanced so much on the land.

Q. The books showed that the company owned the land, and it was carried to stumpage accounts the same as any land that they owned?

A. Yes.

Q. What was the stumpage account made up of?

A. Timber lands.

Q. Just an account of the land owned by the company?

A. Well, not that they owned, quite often money would be advanced on land.

Q. Give us another case where you make advances on land outside of those that you carried to stumpage account before you had any deed or mortgage or other paper?

A. I cannot think of any just now, I am quite sure there were.

Q. You recall, do you not, that the government was very busy in making the so-called land fraud investigations about the time your account was credited with this eight hundred dollars?

A. I know the land fraud investigation was being made. I do not remember the date.

Q. You never paid any taxes on this land? You did not have it cruised?

A. Nothing more than when I was over them.

Q. You did not have them cruised after that?

A. No sir.

Q. The company attended to all that?

A. I do not remember.

Q. They had had that cruised before you took it up at all?

A. I do not know.

Q. Did not Brumbaugh tell you that he had cruised them?

A. Yes.

Q. He knew that he was the company cruiser?

A. He was a cruiser.

Q. Did not he tell you what the land cruised?

A. He gave me an idea.

Q. You had the custody of the records and correspondence of the company had you not?

A. No sir.

Q. You had the record of the cruises that were sent into the company?

A. Not always.

Q. Nearly always?

A. No, I cannot say that I did.

Q. Did not you have the custody of them?

A. No.

Q. Didn't you file them?

A. No sir.

Q. Who attended to that?

A. Well, I think Mr. Kelly had more to do with that than any one else at that time.

Q. Who was manager of the company in September 1907?

A. George Kelly I think, he was acting as man-

ager.

Q. Any payments that were made in 1907 were made through Mr. Kelly's authority?

A. Yes.

Q. Do you remember paying Ethel La Raut and Lucy La Raut twenty-five dollars each that year?

A. I do not remember that I did. I presume that I did.

Q. How did it come that you did not charge them with that?

A. Their account had been ruled off.

Q. Why were they ruled off when you knew they were not closed?

A. I did not know anything about that.

Q. You did not know that Mr. Booth was carrying them along there, and that the company was carrying them along there as their own lands?

A. Their accounts were closed up and charged into stumpage accounts.

Q. How big an account is that stumpage account of yours.

A. What do you mean, the total amount of the stumpage account in dollars and cents?

Q. No, in acres.

A. I cannot say, I do not know.

Q. Hundred and fifty thousand acres?

A. Somewhere close to that.

Q. You could keep the Lucy and Ethel LaRaut accounts, a little account of three or four hundred dollars, by running it into that large account, better than you could keep it in their individual names?

A. It was easy to determine as to the amount.

Q. Now, when you made a charge in 1907, there on lots one, two, seven and eight, and lots nine, ten, fifteen and sixteen, section twenty-eight, township 21 south of range 2 west, of fifty dollars, and suppose I would come along and wanted to see what Lucy LaRaut's account amounted to how would I know that that was the Lucy LaRaut and Ethel LaRaut claims?

A. There is nothing, the name was not mentioned, but the description here shows whose land it was.

Q. You do not have it entered up against the individual?

A. It is simply in the stumpage account.

Q. Would you consider that way of keeping books, there without any index to it, or anything to indicate the date when it was paid, an easier way to keep an account in the name of Lucy LaRaut, and by keeping it in her own name properly indexed?

A. Well, her account had been ruled off.

Q. It was not closed, why was it ruled off?

A. It was balanced.

Q. You rule an account off every time it is balanced?

A. Sure.

Q. You do not reopen it any more until another transaction occurs in it? Then you reopen it, why did not you reopen it when these transactions occurred?

A. I cannot say as to that.

Q. Is not the reason that you did not reopen it

because this transaction had nothing to do with Lucy LaRaut or Ethel LaRaut, and that the land was owned by the company?

A. I was evidently instructed by Mr. Kelly to put that account in that way.

Q. You supposed that that was just an expense growing out of the land?

A. No, I knew nothing about it.

Q. You always considered that the company owned the land?

A. I did not know.

Q. You so understood it when you carried it into the stumpage account?

A. I have told you.

Q. You never would have carried this land into that stumpage account, if you had not thought that it belonged to the company?

A. If I had been instructed to do so, I would have entered it.

Q. But you were not instructed every time you made an entry in your book were you?

A. It is owing altogether on the account.

Q. You do not remember of receiving any instructions to enter those in the stumpage account?

A. I would not have entered it had I not received instructions.

Q. Why?

A. Because I had no authority to do it.

Q. When the company gets a deed to land and you pay out money on account of it does John Kelly or George Kelly or Booth have to run around and

tell you how to enter it on the books?

A. They give me authority to pay out money before I do so.

Q. When you pay out money for land you enter it in the stumpage account when the title comes to the company?

A. Yes.

Q. And not otherwise?

A. How do you mean, otherwise?

Q. Unless the land does come to the company?

A. Well, I do not know always when the company receives the title.

Q. When you do not receive the title you charge it to what account?

A. If Mr. Dixon told me to charge it to stumpage account, I would do so, he was manager.

Q. Regardless of whether that was proper in relation to the rest of your accounts?

A. He would give me some directions how it was to be done.

Q. Well it must keep those managers up there pretty busy directing you how to make entries in your book?

A. They are not making entries every day in the stumpage account.

Q. You were about this time, were you?

A. No.

Q. Those years?

A. No sir.

Q. Who instructed you to enter that land in the stumpage account of the company?

A. As I said before, Mr. Kelly was manager and he told me that I could take credit for \$500.00.

Q. Kelly told you to enter that in the stumpage account?

A. He evidently did, or I would not have done it.

Q. Don't you know that John Kelly never told you where to make a single entry in your books? He is not a bookkeeper?

A. I think you are mistaken about Kelly.

Q. He did tell you then where to enter it?

A. Naturally it would go into that account.

Q. It would naturally go into that account because the land became the land of the company?

A. No.

Q. Who told you to enter Roche's land in the stumpage account?

A. John Kelly.

Q. Who told you to pay him \$100.00? You gave him credit for \$100.00 more than he paid out?

A. He just took credit the same as I did.

Q. You closed out the account then as to those matters?

A. No, Mr. Roche's and my account are not closed.

Q. Because you continued on with other transactions?

A. Yes.

#### Re-Direct Examination.

Questions by Mr. A. H. TANNER.

Q. Now, this amount of \$500.00 that you have referred to as a loan, was that an estimated amount

to cover the cost of the land, expenses and etc.?

A. No, sir, that was simply a loan on the land.

Q. Do you recall what the expenses were outside of the four hundred dollars, or whatever was paid to the government for the land?

A. I cannot say.

Q. Now, you have referred to a stumpage account other than this stumpage account that is here in evidence connected with these Brumbaugh Land Claims,—were these items or any of them in this account entered in that other stumpage account, than the one that appears here?

A. No sir.

Q. And this stumpage account as I understand you, is a separate account that was kept of these particular claims?

A. These accounts were kept separate, but when they received credit they were charged in that stumpage account.

Q. What stumpage account,—this stumpage account that is here?

A. They were charged in the general stumpage account.

Q. Why was that done that way?

A. Well, it was July, these accounts were closed in July, 1902.

Q. Had this payment of \$800.00 that is charged here in this account anything to do with the land fraud investigation referred to?

A. None whatever.

Q. At the time you opened this account referred

to and which is here in evidence as an exhibit, did you have any idea of any investigation of the so-called land frauds at that time?

A. No sir.

Q. You simply entered the account in a way that would be intelligible to you, and the other officers of the company?

A. Yes.

Q. Now, is it not a fact, that in all other purchases of land except these eight claims, no account was kept with the individuals, but the amount paid was credited to cash, and charged to stumpage account?

A. Yes sir, it was either cash, or the bank. It was owing to how the amount was paid.

Q. No account was kept with the individuals from whom the purchase was made at all, was it?

A. No sir.

Q. Is it not a fact, that this stumpage account that you have referred to, includes expenses for cruising and all other expenses,—taxes and so?

A. No, not taxes.

Q. Not taxes, but other expenses.

A. Cruising, that is charged to cruising.

#### Re-Cross Examination.

#### Questions by Mr. JOHN McCOURT.

Q. Just show me where any expense for cruising or other expenses connected with those claims was charged to Stephen, Alice LaRaut, Edward Jordan, Roche, yourself or Brumbaugh?

A. There is nothing in that.

Q. Nothing to show that,—it was never charged against either of them?

A. I do not know what the claims cruised.

Q. You did know that you went to Roseburg and spent twenty or thirty dollars?

A. Yes.

Q. Was that charged against you?

A. No, that was charged in that other account.

Q. It had nothing to do with the account against you?

A. It was included in this group.

Q. Was it included in the general stumpage account?

A. Yes.

Q. The expenses of the company on acquiring land?

A. It was charged to this account and afterwards transferred into the stumpage account.

A. Show where it was charged to this account that you speak of.

A. This Brumbaugh Land Group.

Q. Which did not have anything to do with you, or Lucy LaRaut, or any of the other individuals?

A. It was not charged to their account.

Q. It was general expenses, charged to the expense account of the company, the same as any other expenses incurred by them?

A. In a different way.

Q. It was charged against the Brumbaugh land claims, the same as the expenses against the Saginaw Mill, or some other bill, or store, was charged against

the Saginaw Mill or Store?

A. Yes sir.

Q. And went into your general expenses account? When you transferred it?

A. Yes.

Q. The account you took it to, was the Brumbaugh land claim account, and not Stephen LaRaut, or Alice LaRaut, or Ethel LaRaut, or Lucy LaRaut?

A. It was afterwards charged into the stumpage.

Q. It was never charged against any of those people?

A. No.

Q. It was charged to the general expenses of the company in relation to acquiring those lands on Brumbaugh Creek?

A. No sir, I was requested to keep them separate.

Q. Keep what separate?

A. The expenses.

Q. Where did you keep them separate?

A. In the Brumbaugh Land Claim account.

Q. You were also told to keep the Saginaw Mill or Store expenses as shown in this account?

A. Yes.

Q. And you kept those expenses in relation to the Brumbaugh Land Claims just as you kept the expenses of the Saginaw Mill, and charged them all up generally?

A. The Saginaw plant expenses were charged to that plant.

Q. And the expenses of the Brumbaugh Land

Claim were charged to the Brumbaugh Land Claim, and not to the individuals?

A. It shows that it was.

Q. It never was charged to the individuals?

A. No.

Q. And you opened up that account in March 1902, that Brumbaugh Land account?

A. Yes.

Q. Before the claim had ever been proved up on?

A. Just after they had been filed.

Q. After they had been filed?

A. Yes.

Q. After there had been some expenses incurred in relation to them?

A. Yes sir.

Q. And you carried them right along there from that time on?

A. Yes.

Q. Until you closed that out on July 31st?

A. No, December 31st.

Q. July 31st, when they were charged to stumpage generally?

A. Yes.

Q. The last entry in the account shows July 31st, 1902?

A. Yes.

Q. The date that each of you got \$100.00?

A. Yes.

Q. Now then, if the account of Ethel and Lucy La Raut, and these other parties was to be kept sep-

arately, why did not you charge into their several accounts these expenses that were chargeable to their respective claims?

A. I cannot say.

Q. If you had been told to keep them separate, so you could determine how much the company had been out on each one of the claims, that would be the natural way to do it would not it?

A. You can tell by taking the two accounts with the individuals and the Brumbaugh Land account.

Q. You have been over that before?

A. Yes.

Q. Suppose a man came into the Booth-Kelly Lumber Company with a new bookkeeper and wanted to know what the Ethel LaRaut account was, it would show \$400 paid on May the 8th, and on July 31st, \$100, and a credit of \$500 on July 31st?

A. That is the way the account shows.

Q. That would be the end of that, and all he would see?

A. On the face of it, yes.

Q. There is no reference to any Brumbaugh Land Claim in there?

A. It shows that the account is there,—the Brumbaugh Land Account.

Q. Look at that Ethel La Raut account.

A. It does not show in that individual account, but the Brumbaugh Land Account was in our books the same as the individual account.

Re-Direct Examination.

Questions by Mr. A. H. TANNER.

Q. Is it not a fact Mr. Dunbar, that there are many charges and items in this stumpage account where the company does not come into possession of the land?

A. I do not just understand the question.

Q. Well, for instance,—suppose the company, was looking at a tract of land with a view of buying it, and incurred expenses in cruising, and did not buy it finally,—how would the expenses be entered in that case?

A. We kept what we called a cruising account, and all of the expenses of cruising would be charged to that account, and charged into the stumpage account at the end of the year.

Q. It all goes into the stumpage account?

A. It goes into the stumpage account eventually.

Q. That would be so whether the company got the land or not?

A. Yes sir.

Q. How long has that been the custom of keeping the accounts in that way, and charging it finally into the stumpage account?

A. It has always been since I have been with the company.

Q. Is it not a fact now Mr. Dunbar that those items formerly, I do not know what your late practice has been, but formerly, they would be charged directly into the stumpage account?

A. Do you mean the early transfer to the company?

Q. At this time in question along in 1902 is it

not a fact that expenses of that kind would be charged into the stumpage account directly?

A. Do you mean after they kept a cruising account?

Q. Yes.

A. I cannot answer that.

Q. Do you remember about that?

A. I do not remember.

Q. How is it about the purchase of land, what is the fact about that,—where would those items be entered in the first instance?

A. You mean land that we bought,—timber land?

Q. Yes.

A. To stumpage.

Q. How about taxes,—was there a separate account kept of taxes?

A. Yes sir.

Q. What is this stumpage supposed to include?

A. It includes money paid for timber lands, and cruising expenses.

Q. Does it include any other expenses attending the acquisition of the land?

A. Any expenses pertaining to the land.

#### Further Cross Examination

Questions by Mr. JOHN McCOURT.

Q. I direct your attention Mr. Dunbar to this stumpage account again, which has been introduced in evidence here, and ask you in what sort of a book you kept that,—what do you call the book?

A. Kept it in a ledger.

Q. Now this part of the account, then as shown

here what are those sums of money,—this \$500 and this charge of \$301.03 in 1902 and different charges along down, was this stumpage account charged with those?

A. Yes.

Q. What corresponding credits occur there?

A. These accounts are credited,—these different ones with the money that is shown in this ledger account

Q. How does that stumpage account balance them?

A. The stumpage account does not balance.

Q. Does not balance?

A. No.

Q. You charged it with what ?

A. Money paid out.

Q. Charged it with money paid out?

A. Yes sir.

Q. What credit does it receive?

A. Well, it receives credit for the amount of timber cut in the yearly operations.

Q. What entry is made of land that you purchase?

A. Do you mean moneys paid out for land?

Q. Yes.

A. It is charged to the stumpage account. That is the way the account is kept, but you understand, the stumpage account is never balanced as long as you have any timber lands.

Q. Does it get credit for the land that you secure?

A. Not unless there is a sale.

Q. Is it charged to any land that you secure?

A. Sure.

Q. That is what I am trying to get at,—I am trying to ascertain whether or not that account would get credit with the acquisition of the land, or charged with the sum of money paid in the first instance?

A. It shows,—the figures that you have there shows that it would.

Q. That is not the way it appears in your

A. Yes it appears in our ledger just as we have it here. Stumpage is charged with that amount.

Q. So far as S. A. LaRaut is concerned in the stumpage account itself, is it charged in that account?

A. Those entries are taken from the stumpage account.

Q. Now the taxes that were paid were they charged to any separate tract of land?

A. No, they were not.

Q. You never charge any taxes to these separate tracts of land involved in this suit?

A. Not that I know of.

Q. The company paid those taxes right along in a lump sum upon these lands as well as any other land owned by the company?

A. I cannot say, I did not go through the tax rolls myself.

Q. There is not any charge to these particular tracts of land for any specific sum paid for taxes?

A. Not separately.

Q. Nor otherwise?

A. I cannot say.

Q. There were quite a number of employes of the company who took up land in 1901,-1902,-1903, were there not?

Counsel for defendant objects to the question as immaterial.

A. The ones which you see there.

Q. There were a lot more besides these?

A. Not that I know of.

Q. Did not the company advance money to a good many people to take up timber land there?

A. Not that I know of.

Q. There were some were there not?

A. Just those that are shown there are the only ones that I can remember of.

Q. In case the company did advance sums of money to other people to take timber claims you would keep the account in identically the same manner as you were keeping them under these persons names?

A. They might do that, and again they might not.

Q. You do not know whether they did or not?

A. No.

Q. What is your best recollection about it,—you being the bookkeeper of the company for the last ten or twelve years?

A. Well, it would be charged to them, or charged to stumpage.

Q. It would naturally be charged to the individual would not it?

A. Not always.

Q. Well suppose Mr. John Kelly came rushing in there some day and wanted to know how the account of Bill Jones stood,—do you mean to say that you would carry an account a way over in stumpage some where to be able to tell how the account stood?

A. I do not know whether there was any account with Bill Jones.

Q. In case Bill Jones had received some advances in connection with the timber entry, how would that be entered?

A. It might be charged to him.

Q. Of course.

A. But the account might be either way.

#### Further Direct Examination.

#### Questions by Mr. A. H. TANNER.

Q. There was no Bill Jones, as a matter of fact was there?

A. No.

Q. Is it not a fact that these are all the claims where the company advanced money?

A. I just told Mr. McCourt I had no remembrance of any other.

Q. If there had been any other, you would have been apt to know about it, would not you?

A. I presume I would.

(Witness excused.)

THOMAS ROCHE, is called as a witness for the defendant and being first duly sworn testifies as follows:

## Direct Examination.

(Questions by Mr. A. H. TANNER.)

Q. State your name, age and occupation.

A. Thomas Roche, age 56; residence Eugene, occupation bookkeeper at present.

Q. Are you in the employ of the Booth-Kelly Lumber Company, and if so how long have you been in the employ of that company as bookkeeper?

A. Yes, about ten years.

Q. Where have your duties been performed?

A. At the general office, mostly, but I worked at each of the mills at times, but I worked mostly at the general office.

Q. In Eugene?

A. Yes.

Q. Where were you employed along about 1902, when you filed on this timber claim?

A. At Eugene.

Q. Do you recall the circumstance of your filing on this timber claim involved in this suit?

A. Yes, I got knowledge that it would be possible for me to get a claim, and I thought it would be a good thing and I took it.

Q. Did you take that claim for your own benefit?

A. Yes sir.

Q. And did you take it for the purpose of making what you could out of it for yourself?

A. Yes sir.

Q. Had you prior to filing on the claim promised to sell it to any one, or deed it to them, or anything of that kind?

A. No sir.

Q. Had you made any contract or signed any paper or made any agreements, either verbally or in writing whatever before you took the claim, or before you proved up on it, to sell it to anybody else at all?

A. No sir.

Q. Or to sell the timber on it?

A. No sir.

Q. Was any other person, firm or corporation interested in any way with you in the taking of this claim, —I mean to say, had you agreed in any way to sell or dispose of it to anybody else?

A. No sir.

Q. Did you inspect the land before filing on it?

A. Yes.

Q. Who did you go up to where the land is with who went with you?

A. Dan Brumbaugh and Ed. Jordan.

Q. Mr. Jordan went with you?

A. Yes sir.

Q. And went up there together and looked at the claim did you?

A. Yes sir.

Q. And then did you go to Roseburg to file on your claims?

A. Yes sir.

Q. Who went with you at that time?

A. We made the trip all at one time. Dan Brumbaugh and Ed Jordan, we went right along.

Q. You all went up there together did you?

A. Yes sir.

Q. And then did you go back and prove up on the land in the regular way?

A. Yes, and prove up in the regular way.

Q. Who were the witnesses on your claim?

A. I think it was Ed. Jordan and Dan Brumbaugh, that is my recollection.

Q. Had you spoken to Mr. Kelly, about getting the timber claim for you?

A. Not that I recollect of, I do not think I did.

Q. How did you come to get knowledge that you could get a timber claim?

A. Well, as near as I can remember, it was Mr. Dunbar that spoke to me about it, I presume in connection with his claim.

Q. You were working there together in the office?

A. Yes, it was he that gave me the information.

Q. Well, how did you arrange, or did you arrange for the money to pay for the lands, what arrangement did you make about it?

A. I borrowed it.

Q. From whom?

A. The Booth-Kelly Lumber Company.

Q. How was that done, just explain it?

A. I got the money and it was charged to my account.

Q. Charged up to your account?

A. Yes.

Q. State whether or not it was the practice or custom of the officers or employes of the company to have a running account with the company and to draw on it, and when they wanted to over-draw their accounts at

times?

A. It is the practice with a good many.

Q. Did you have such an account at that time?

A. Yes sir.

Q. Now, when was it that you sold this land, to the Booth-Kelly Lumber Company?

A. I think along towards the latter part of 1904.

Q. Did you make a deed about that time?

A. About that time, my recollection is that it was about that time, I do not remember the exact date.

Q. How much did the company pay you for that claim?

A. \$1300.00 altogether.

Q. How was that paid?

A. It was paid by giving credit to my account.

Q. And you subsequently got the money, did you, to balance the account?

A. Yes, sure I got the money?

Q. Did you take that claim Mr. Roche, in good faith and for your own benefit?

A. Yes sir.

Q. Do you remember that Mr. Edward Jordan went to Roseburg with you at that time that you went up and filed on your claim?

A. Yes he went with me.

Q. He testified in his examination in this case that in some conversation with you, or in your presence, that he said that one hundred dollars was very little to get out of it, but that it was better to get that than nothing, and that you nodded your head,—did not say anything, but nodded your head,—did you ever have such a con-

versation as that?

A. I have no recollection of it, or any part of it.

Q. Was there any talk or understanding among you that you were to get \$100.00 out of it or anything of that kind?

A. No sir, there was no conversation like that not with me.

Q. Did you when you went up to prove up on the land carry the expense money, and the money to pay the government for the land?

A. Yes, I took the money.

Q. Did you have the money to pay for Jordan's claim?

A. Yes.

Q. And the others?

A. Yes sir.

Q. What shape was that in, was it a draft or check?

A. I cannot answer that question, because I do not know.

Q. You do not remember whether it was a draft or a check?

A. No, I do not, a great many of the details of my going to Roseburg and locating land I have entirely forgotten.

#### Cross Examination.

(Questions by Mr. JOHN McCOURT.)

Q. How long have you been working for the Booth-Kelly Lumber Co.?

A. About ten years.

Q. In what capacity?

A. Bookkeeper.

Q. What part of the company's books did you keep?

A. My particular part of the work was on the sales account.

Q. What sort of sale, lumber sales?

A. Sales of lumber.

Q. Who is your immediate boss? Under whose directions are you?

A. Well, Mr. Dunbar, he is the chief bookkeeper.

Q. You are just under him?

A. Yes.

Q. You are what they call head bookkeeper?

A. I do not know what you call it.

Q. Are you a married man?

A. Yes sir,—my wife is dead. Well, I tell it was just about that time that my wife died, and for that reason my memory is not very clear about the details of those transactions.

Q. You deeded this land to the Booth-Kelly Co. in July 1902, did not you?

A. My recollection is that it was about 1904.

Q. Did not you make two deeds?

A. Not that I remember of.

Q. You would have remembered it if you had?

A. I would be apt to.

Q. Did not you make a deed along there about July 31st, 1902, when the company credited you with five hundred dollars, or some thing of that kind?

A. I do not remember of it?

Q. The company carried your land along in that stumpage account from that time?

A. I think from 1902, yes.

Q. What authority did the company have to carry it in their stumpage account?

A. About 1902 or about the time that that five hundred dollars was credited to my account, there was a kind of an understanding that eventually the land would revert to them.

Q. You expected to make a deed as soon as you obtained title?

A. Yes, and I gave a deed finally.

Q. But you did not make the deed at that time, which was kept off the record?

A. Not that I know of.

Q. Did they pay you one hundred dolalrs at that time?

A. What time? What hundred dollars?

Q. One hundred dollars over and above the four hundred dollars that you were charged with?

A. I was charged with five hundred dollars all together.

Q. Your account is charged with Five Hundred Dollars?

A. Yes.

Q. And you were credited with four hundred dollars?

A. I was charged with four hundred dollars, and I was credited with five hundred dollars, that is my recollection of it.

Q. In reference to these lands?

A. I think so.

Q. Look at the transcript of it, and see?

A. Well, that may be, but this credit of \$100, was to

take up this four hundred dollars, and one hundred dollars that I got in some other way. I have been advanced money several times.

Q. You have one hundred dollars over and above what you had been out on the claim, in fact you had not been out anything personally?

A. Why, I hope not, it would be a very poor thing if I had been out a dollar.

Q. During that period you got one hundred dollars, on your timber claim, or in relation to your timber claim?

A. I got it for some purpose, I do not know what it was.

Q. Now, you got credit for eight hundred dollars later?

A. Yes sir.

Q. Do you recall that that was about the time that there was a rather vigorous and alarming land fraud prosecution down here in Portland?

A. I do not know, I did not pay any particular attention to those things.

Q. You did not pay any particular attention, but people around you, and the Booth-Kelly Lumber Company were paying some particular attention?

A. How they may have felt, I do not know, because I had nothing to do with their business.

Q. You understand at that time, that they were somehow alarmed at some action of Mr. Heinie in relation to Mr. R. A. Booth?

A. There may have been some such a thing, but as I say, I did not pay any attention to it.

Q. You did not feel alarmed about it?

A. No.

Q. What was the reason that you were carrying Jordan's money along with you?

Q. I do not know. I often went with people and paid their expenses. I paid it out of one purse, so as to keep account of it.

Q. What people was that?

A. I cannot name them, Ed. Jordan was one.

Q. You frequently went down there with crowds of people to Roseburg?

A. No, not there,—there has been times that I have been out occasionally.

Q. For the Booth-Kelly Lumber Company?

A. No, a great many years before I ever seen the Booth-Kelly Lumber Company.

Q. You never carried money that was advanced by the Booth-Kelly Lumber Company? Up there, except this time?

A. I cannot say as to that.

Q. You do not recall the reason why you carried the money instead of Jordan?

A. No, I do not know any particular reason for it.

Q. Did you pay Jordan's expenses down there? Hotel bill, railroad fare, etc.?

A. I think I paid all his expenses.

Q. Paid the fees at the land office?

A. I did.

Q. Who gave you the money to do that with?

A. I got it from the company, I do not know who

gave it to me.

Q. Who gave you instructions to pay all of Jordan's expenses there?

A. I think it was Mr. Dunbar.

Q. You think Mr. Dunbar told you that?

A. Yes.

Q. Did he tell you to pay Brumbaugh expenses too?

A. I do not think I paid Brumbaugh's expenses, I do not know whether I did or not.

Q. You refer to Harry Dunbar, the bookkeeper down there for the Booth-Kelly Lumber Company?

A. Yes sir.

Q. You say that Dunbar told you about this land?

A. I think it was he that told me about it first.

Q. He had gone and filed on his timber claim?

A. I think I went before he did. It was not convenient for both of us to leave the office at the same time.

Q. Did he know about the land before you did?

A. Which land?

Q. That you filed on? Did he tell you where you could get a piece of land?

A. I do not know. It might have been Dan Brumbaugh that I had my information from, he was the cruiser that located us.

Q. Did not John Kelly tell you about the timber claim?

A. He possibly might have said something, but it was very little, whatever John Kelly talked to me about it.

Q. Had not he talked to you about it?

A. I do not know as to that, but there was not much said.

Q. Brumbaugh was not there at Eugene was he?

A. I think I met Brumbaugh at Cottage Grove.

Q. You understood he was to meet you there before you left Eugene?

A. Yes sir.

Q. And you left Eugene for the purpose of going out and visiting this claim?

A. Yes.

Q. And you understood that Brumbaugh was to show it to you?

A. Yes.

Q. And John Kelly told you that he would pay the expenses?

A. Either he or Dunbar, I do not remember which of them told me. John Kelly was not in the office all the time, but Dunbar was, and whatever instructions Mr. Kelly or Mr. Booth would have to come to me it came mostly through Dunbar.

Q. Now these items of expenses that you paid out for Jordan and yourself, and the fees, etc., up there at the land office, they were not charged against you on the books of the company?

A. No, not a dollar, I do not think.

Q. Nor in general?

A. I do not know, you might call a hundred dollars. I do not know how that was carried.

Q. You did not give any concern about that?

A. No, I did not.

Q. You did not care what it cost those fellows to

pay your expenses for getting the claim, that was their concern?

A. Yes, I cared a good deal about it.

Q. You never cared enough to find out about it.

A. I was more careful about their funds than I was about my own.

Q. You never ascertained whether it was charged against you or not?

A. I have no recollection of it.

Q. As a matter of fact you know now it was never charged against you?

A. I do not know without looking over the account.

Q. You have not looked over the account to find out before coming down here?

A. No sir.

Q. And you had nothing to do with the keeping of these items in the books that appear to have been transcribed here?

A. I have nothing to do with that.

Q. Nothing to do with the entries in the books?

A. Possibly I might have had some of it.

Q. That matter was not under your direct charge?

A. No not under my direct charge,—any entries I made I was told to make, and it might be possible that I entered all of these entries, but I do not know.

Q. You were aware of the fact that from 1902 on the Booth-Kelly Lumber Company were carrying those lands including you timber claim in their stumpage account, as their own lands?

A. It is in the stumpage account.

Q. You knew that all the time?

A. Yes sir.

Q. Do you know why it was carried in the stumpage account?

A. It was a fine place to put it.

Q. A fine place to put land that belonged to the company?

A. What?

Q. It was a convenient place to put land that belonged to the company?

A. Yes.

Q. You understood at the time Mr. Roche, and Mr. John Kelly understood at the time that the company would get this land of yours?

A. I do not know sir.

Q. You thought they would?

A. No I did not give it a thought,—I thought they might after a time.

Q. What were you going to do with it?

A. I wanted to sell it.

Q. When did you first try to sell it?

A. When I knew it was mine.

Q. You knew it was yours when you got this hundred dollars on July 31st 1902?

A. Yes sir, I knew it was mine then.

Q. That was what you expected to get out of it, was not it?

A. Oh, no.

Q. Did you not tell Jordan that it was pretty hard to have to sell it for a hundred dollars—that you were throwing away your right for a hundred dollars, or words to that effect?

A. No.

Q. Jordan is not telling the truth about that?

A. I do not know.

Q. You did not tell Jordan that?

A. No sir.

Q. You expected that that was all you were going to get out of it when you got that hundred dollars did not you?

A. No, I did not expect anything of the kind.

Q. Why did you suppose that the company or John Kelly did not charge against your account all the expenses they were out in regard to getting that land?

A. I do not know.

Q. Did you suppose that was due to an understanding with you that you were acting for them in taking the land?

A. There was no understanding whatever between us in regard to it at all. I got the claim for my own good.

Q. They were helping you to do that?

A. As they often have done, yes sir.

Q. They were helping you, like they were helping Stephen LaRaut?

A. I do not know anything about other people at all.

Q. They gave you nine hundred dollars and Stephen LaRaut \$150.00?

A. I do not know how much LaRaut was paid. I do not know how much any body was paid.

Q. At the time that you got this eight hundred dollars, you were bookkeeper for the company, and entered

a good deal of their records and other transactions?

A. I was bookkeeper there as I said before, but matters pertaining to land, or deeds, or anything like that was entirely out of my regularly appointed work, because my regular work consisted in keeping up the current live accounts with customers, that was my part of the business.

Q. With the exception that when you went up on this land deal, you carried the money and paid the expenses?

A. I have carried money since that belonged to the company. And possibly I may again.

Q. What salary were you receiving at the time that you took this timber claim?

A. I do not know sir.

Q. Well, about what?

A. I should say about a hundred dollars a month, at that time.

Q. What did you get when you started in with the company?

A. I started in to work for the company at \$65 a month.

Q. That was ten years ago?

A. Yes.

Q. And you had been working about two years?

A. About a year,—I said that by guess, a hundred dollars a month, I do not know, it might have been seventy-five or eighty-five.

Q. You were raised about ten dollars a year right along, five or ten dollars a month each year?

A. Figure it any way you have a mind to, probably it would work out that way.

Re-Direct Examination.

(Questions by Mr. A. H. TANNER.)

Q. Now, this matter of five hundred dollars,—counsel kept asking you about one hundred dollars,—was there any hundred dollars paid you at any time?

A. I think not. Thought about that time my account was charged with a hundred dollars.

Q. Was not that included in the five hundred dollars?

A. The five hundred dollars was to take care of that hundred dollars, and four hundred dollars. My account was badly over-drawn, so I was allowed to take credit for that much.

Q. Now you were not under any obligation or expectation to sell this land to the Booth-Kelly Lumber Company up to the time you sold it were you?

A. No sir.

Q. You continued to be the owner of the land up to the time that you did sell it to them, did not you?

A. Yes sir I considered myself so any way.

Re-Cross Examination.

(Questions by Mr. JOHN McCOURT.)

Q. Was the final receipt for this land delivered to you?

A. Yes sir.

Q. Was the patent delivered to you?

A. I think so.

Q. Who did you get the patent from?

A. I think it was mailed to me.

Q. By whom?

A. By the government I suppose, or the land office—I do not know where it came from.

Q. You do not have any recollection of that?

A. No.

Q. You never had it in your possession?

A. Yes, I had it for a while.

Q. Are you sure of that, is it not a fact that some months before you deeded this land, the last time, that you deeded it in 1904, and that John Kelly got possession of that patent through Frank E. Alley of Roseburg, and that he had the receipt and sent it up there?

A. I do not know.

Q. As a matter of fact, when you got this hundred dollar credit on your account, and even before that in fact when you first came back from Roseburg, you turned over the final receipt to John Kelly?

A. Not that I know of, no sir.

Q. You would not swear that you did not, would you?

A. No sir, I do not remember.

Q. Is it not your best impression that you turned that final receipt over to John Kelly when you first came back from Roseburg?

A. I cannot tell you.

Q. That you brought Jordan's along with you, and turned them both over?

A. I cannot remember, no sir.

Q. You cannot remember anything about it?

A. No, I will tell you the reason why, my recollection of a great many of the details has passed away, and

I trust that you will never go through what I went through in 1901.

(Witness excused.)

JOHN F. KELLY, is called as a witness for the defendant and being first duly sworn, testified as follows:

Direct Examination.

(Questions by Mr. A. H. TANNER.)

Q. State your name, age, occupation, and residence?

A. John F. Kelly, 53 years old, I am farming.

Q. State what your connection was with the defendant the Booth-Kelly Lumber Company, and when it began, and when it terminated.

A. Well, I was president in the first place, and afterwards vice-president, and at the time I terminated my connection with the company, I was just a director in the company.

Q. Did you assist in the organization of the company?

A. Yes sir.

Q. And continued with it down until about what time?

A. I think five years ago.

Q. Have you any interest as a stockholder, or otherwise in the company at this time?

A. No sir. It was about five years ago that I went out as director and I have had no interest since that time.

Q. When did your interest in the company terminate?

A. Well, I think it was along perhaps in August or September, 1910.

Q. Since that time you have not had any interest

in it?

A. None whatever.

Q. State what position you occupied in the company along in 1902 when these claims in dispute in this suit were taken up by these entrymen and entrywomen?

A. I was vice president at that time I think.

Q. What relation did you have towards the land department of the company? And in buying and selling its lands?

A. Well I did the principal part of the purchasing of the land at that time.

Q. State in a general way briefly what the plant of the company consisted of at that time?

A. The entire plant?

Q. I mean in mills,—where did you have mills?

A. We had a mill at Saginaw, one at Coburg and one at Wendling and I think one at Springfield at that time.

Q. What is the fact as to whether or not the timber land acquired by the company was mainly tributary to these mills?

A. Yes sir.

Q. And for what purpose were they acquired?

A. To back up the operations of the mills probably.

Q. Were you acquainted with Edward Jordan?

A. Yes sir.

Q. Was he an employe of the company at that time along about 1902?

A. Yes, and prior to that.

Q. How long had he been working for the company?

A. Up to 1902, do you mean

Q. Yes up to the time he filed on that timber claim?

A. I presume five or six years.

Q. Where did he work and in what capacity?

A. He had worked at Saginaw, as a common laborer and as a kind of sub-foreman, and he had worked at Coburg as a yard-foreman.

Q. Do you recall the circumstance of his wanting to file on a timber claim, and if so, state the facts?

A. Yes I remember the circumstances.

Q. State the circumstances under which he filed?

A. Well, Mr. Jordan spoke to me a number of times about securing a timber claim for him,—that he had not used his rights, and was anxious to exercise it. I at that time was engaged in looking up land purchases for the company, and in doing that, we sometimes found vacant lands and frequently parties looking after locations asked me to find them timber claims, and he among the rest. I remember that this land was in a tract up in what was called the "Brumbaugh River tract" and I told him of it, and he went up and looked at the land,—went up and examined it and filed on it.

Q. He testified here that you called up over the telephone when he was working at Coburg and asked him if he did not want to take a timber claim, or something of that kind. Do you remember that?

A. I perhaps called him on the telephone and told him that I had found a claim that he might take if he wished.

Q. What did you tell him about taking the claim if anything, what occurred about it?

A. I think he came over to Eugene that day, or perhaps the next day, and I met him there, and gave him the numbers of the land, and directed him to meet Brumbaugh at Cottage Grove, and he would show him the corners and take him over the land.

Q. When did you next see him?

A. I think he went direct from there to Roseburg and made his filing.

Q. From where do you mean?

A. From Cottage Grove, or from the land. He went on the Roseburg and made his filing, and I think perhaps he returned the evening of the same day, and I saw him that evening after he returned.

Q. Did you see him after he had proved up on the claim?

A. Yes I saw him frequently, every few days.

Q. Did he call at the office when he came back from filing on the land, do you remember?

A. I think when he came back from Roseburg that evening he took my horse and buggy and drove to Colburg that evening.

Q. Did you have any conversation with him at that time about his filing on the claim?

A. About his having filed?

Q. Yes.

A. I do not recollect that I did have any conversation, but perhaps I did.

Q. You understood at that time that he had filed on the claim, did you?

A. Yes sir.

Q. Well do you remember seeing him when he came

back from proving up on the claim?

A. Yes, I remember that distinctly.

Q. What occurred at that time?

A. Well, I think he came to me when he came back and handed me the final receipt to his claims and asked me to keep it for him.

Q. Well, did you take it?

A. I think I did, yes sir.

Q. Now, Mr. Kelly, when if any time was there any arrangement made with Mr. Jordan about buying his claim?

A. That was the time that he gave me the final receipt.

Q. Had you made any agreement, or any arrangement with him prior to that time to buy the claim, or that he would take the claim for the benefit of you or the Booth-Kelly Lumber Company?

A. No sir, in fact, I explained to him that he could not do anything of the kind.

Q. You understood that it was against the law at that time to induce or hire him to take it up for you, or anything of that kind, did you?

A. Yes sir.

Q. And you explained to him you say, that you could not agree to buy it, and could not make any such agreement with him before that time?

A. Yes, because he told me that he did not have the money to make his proof and pay his expenses etc.

Q. What arrangement was made with him about furnishing him the money to pay for the land?

A. I told him that we would advance him the mon-

cy to pay for the land and his expenses.

Q. And how was that to be repaid?

A. When he sold his claim.

Q. He agreed to that, did he?

A. He did.

Q. When was the deed obtained from him, do you remember the date?

A. I think the deed was given in July of the same year.

Q. 1902?

A. I think so.

Q. He made the deed then before the patent issued, or do you remember about that?

A. I think he did, but I am not positive about that.

Q. But it was after the final receipt had been issued?

A. Yes.

Q. What did you pay him for the claim?

A. You mean altogether? The money that he received?

Q. Yes.

A. About five hundred dollars, or five hundred fifty dollars, including expenses and all.

Q. Was the balance of that amount over and above the expenses and cost of the land paid to him about the time that the deed was made?

A. Yes sir, I think so, I think about the same time.

Q. Do you remember the circumstances of taking the deed from him?

A. Yes sir.

Q. Just state what they were.

A. Well, he and his wife had some trouble and

were about to separate. I think she had gone to her folks in Grants Pass and he was anxious to get the thing closed up and get what he could out of it before she instituted proceedings against him for divorce. He told me this and I made a trip over to where he was working. I sometimes made two or three trips a week, and one of these trips which I made over there, Mr. Dunbar went along and we made out a deed before we went over, and Mr. Jordan signed the deed there and I paid him. I think he had bought a horse from me, and owed me and I paid him the balance. I think we agreed at that time, that the purchase price of the claim would be five hundred and fifty dollars, or one hundred dollars over and above the four hundred and fifty dollars that the claim had cost; and I paid him the balance, and this deed was sent to Grants Pass and his wife signed it.

Q. Was that the reason for taking the deed over? That he wanted to get the claim to himself?

A. Yes sir. He told me three or four times about his having trouble with his wife, and that he would like to have the matter closed up.

Q. You testified I think, if I am not mistaken that you told Mr. Jordan, that you would advance the money to pay the expenses of the land, did not you?

A. Yes sir.

Q. When was that? When did you make that arrangement with him?

A. I think that was the time that he came over to see about where the claim was.

Q. That is when he started in to file on the claim?

A. Before he started in to file on the claim.

Q. And you say the arrangement was made about buying it, when he brought you back the final receipt?

A. Yes sir.

Q. Now, you know D. H. Brumbaugh?

A. Yes sir.

Q. State whether or not he was an employe of the company at that time?

A. Yes sir.

Q. How long had he been an employe of the company?

A. I think he had worked for us more or less for two or three years at that time.

Q. In what capacity?

A. Well he had done some compass work, and a little cruising in a rough way, and he had done some blasting on the creek up there, and I think he had also acted in the capacity of firewarden.

Q. State what the fact is as to whether or not he had asked you about getting a timber claim?

A. Yes sir he had.

Q. And what did you tell him?

A. I told him that if he could find a good location, he was looking around among the timber, and on his own account some,—that if he could find a good location in there, we would advance him the money to make his proof and to pay his expenses.

Q. Did he go ahead and take the claim under that arrangement?

A. Yes he did.

Q. Was there any understanding or agreement what-

ever before he proved up on the claim that he should sell it to the company, or that he was taking it for the benefit of the company, or anything of that kind?

A. No sir.

Q. Did the company hire him and agree to pay him one hundred dollars to go up there and take a claim for the company?

A. No sir.

Q. And you say that no such arrangement was made with him?

A. No sir, there was no such an arrangement made by me.

Q. When did you make the arrangement with him to buy his claim?

A. Well I do not think there was ever anything said about buying his claim for a number of months,—I do not think that I saw him for three or four months after he filed on his claim.

Q. Well, it was after the final proof was not it, that you made the arrangement to buy it?

A. Yes sir.

Q. Do you remember how much you paid out for his claim?

A. I think all together about five hundred fifty dollars, or seventy or seventy-five dollars, some where along there.

Q. What were those claims worth in there on the Brumbaugh Creek at that time?

A. Well, they were worth all the way from three dollars and a half to five dollars an acre.

Q. Had you been buying other land in there?

A. Yes sir.

Q. And have you any letters or any data to show the land bought, or the prices paid in that vicinity?

A. Yes sir, I looked over our deeds and the considerations of some sixty or seventy odd claims, which we bought in there, and in other townships, tributary to our mill, and have got the data of it.

Q. Will you produce it if you have it with you?

A. (Witness produces document).

Q. I will ask you to state from your list or from any other data that you are able to swear to that the consideration expressed there in this list is the true and correct price paid for this land?

A. Well, I have not check this off myself, after the list was made, I read the descriptions, and the considerations from the deeds to one of our stenographers, who prepared this, and I presume that it is correct.

Q. And the prices paid there are the true considerations?

A. Yes sir.

Q. Substantially the true considerations paid for the land?

A. Yes sir.

Q. As shown there?

A. Yes sir.

Counsel for defendant offers in evidence the document last produced by the witness, and the same is objected to by counsel for the government, for the reason that it is too remote, because the dates with a few exceptions are from two to three years prior to the time in question, and for the further reason that

it appears that the consideration mentioned was not the true criterion of the amount paid for the land or the value thereof. The document is received and filed in evidence, marked defendant's Exhibit No. L, and is in words and figures as follows, to-wit:

# DEFENDANT'S EXHIBIT NO L.

Name.	Date	Acreage	Description.
Lizzie R. Forrest,	August 29, 1899.	400	36-15-1 W
Estimate—15,000,000, price \$1,200. Per average M 8c.			
George McClintock,	August 12, 1901.	320	16-15-1 E.
Estimate—16,000,000, price \$1,920. Per average, 12c.			
B. E. Britt,	June 10, 1899.	160	16-15-1 E
Estimate—\$9,400.00, price \$1,000.00. Average per M 10½c.			
W. W. Meyers,	May 3, 1902.	164.40	18-15-1 E
Estimate 5,100,000, price 900. Average per M 17½c.			
B. F. Einn,	July 3, 1899.	160	20-15-1 E
Estimate—3,300.00, price \$2,200.-10. 480, 28-15-1E. 18,350,000.			
F. M. Wheeler,	June 27, 1899.	80	22-12-1 E
Estimate—\$6,600.00, price \$300.00. Average per M 4½c.			
R. M. Bingham,	Dec. 18, 1900.	80	22-15-1 E
Estimate—4,400.00, price \$350. Average per M.			
L. D. Forrest un	1-3, Mar. 24, 1899.	480	26-15-1 E.
Estimate—31,200.00, price \$333.33. Average 3.			
A. C. Woodcock,	1-3, Mar. 29, 1899.	480	26-15-1 E.
Estimate—31,200,000, price \$333.33. Average 3.			
S. H. Friendly,	Marh. 20, 1899.	480	26-15-1 E.
Estimate—31,200,000, price \$333.33. Average 3.			
Geo. A. Maines,	Apr. 22, 1899.	160	30-15-1 E.
Estimate—10,400,00, price 800. Average 7½c.			
Cameron D. Maines,	Apr. 22, 1899.	160.64	30-15-1 E.
Estimate—6,900,000, price \$800. Average 11½.			
Wm. Eudy,	July 3, 1899.	160	32-15-1 E.
Estimate—12,000,000, price 550. Average 4½.			
Bessie Rickman,	June 26, 1900.	160	12-16-1 W.
Estimate—2,600,000, price \$600. Average per M 23.			
Dnl. Hoffman,	Apr. 15, 1899.	160	2-16-1 E.
Estimate 10,800,000, price \$800.00. Average per M 7½.			
Geo. H. Kelly,	Aug. 22, 1902.	160	4-16-1 E.

Name.	Date	Acreage	Description.
Estimate—9,200,000, price \$1,000.		Average per M 11.	
E. Holgate, July 9, 1900.	40	.....	6-16-1 E.
Estimate—\$2,000,000, price 160.		Average per M 6½.	
Franklin Decker, May 31, 1899.	120	.....	6-16-1 E.
Estimate—4,100,000, price 500.		Average per M 12.	
John Davies, Apr. 13, 1899.	160	.....	6-16-1 E.
Estimate—8,000,000.	160	.....	8-16-1 E.
Estimate—800,000, price \$1,575.		Average per M 18.	
C. A. Hardy, Apr. 24, 1902.	160	.....	8-16-1 E.
Estimate—3,050,000, price 600.		Average per M 19½.	
W. W. Meyer, May 3, 1902.	160	.....	8-16-1 E.
Estimate—6,500,000, price 900.		Average per M 14.	
J. F. Kelly (O. L. Parson) Oct. 31, 1900.	160	.....	8-16-1 E.
Estimate—5,200,000, price \$1,000.		Per average M 19.	
Jas. W. Martin, June 7, 1901.	160	.....	12-16-1 E.
Estimate—11,900,000, price \$500.00.		Average per M 4.	
J. F. Kelly.			
(F. Ott.) June 2, 1899.	160	.....	10-16-1 E.
(J. F. Kelly.)			
Estimate—8,400,000, price \$500.00.		Average per M.	
(J. J. Brown), June 2, 1899.	160	.....	34-16-1 E.
Estimate—12,000,000, price \$400.		Average per M 3 1-3.	
R. W. Crowell, July 22, 1902.	640	.....	16-16-1 E.
Estimate—39,200,000, price \$6,400.		Average per M 17.	
D. B. McBride, Apr. 18, 1899.	160	.....	12-16-1 E.
Estimate—11,600,000, price \$800.		Average per M 7.	
Curtis Baird, June 5, 1899.	162	.....	18-16-L E.
Estimate—7,600,000, price 700.		Average per M 9.	
Frank Hubbard, Feb. 20, 1899.	160	.....	18-16-1 E.
Estimate 3,000,000, price 600.		Average M 20.	
W. H. Martin, Apr. 10, 1899.	160	.....	20-16-L E.
Estimate—4,400,000, price \$750.		Average per M 17.	
Jas. C. Reed, Apr. 3, 1899.	320	.....	22-16-1 E.
Estimate—26,600,000, price \$1,500.		Average per M 5½.	
H. L. Sauers, Jan. 7, 1901.	160	.....	22-16-1 E.
Estimate—14,200,000, price \$1,000.		Average per M 7.	
A. C. Woodcock, Apr. 4, 1902.	160	.....	26-16-1 E.
Estimate—11,200,000, price \$750.		Average per M 6½.	
(B. E. West.)			

Name.	Date	Acreage	Description.
D. McBride, Mar. 19, 1902.	160		34-16-1 E.
Estimate—7,200,000, price \$500.		Average per M 7.	
Gus Braham, Aug. 31, 1899.	160		201601 E.
Estimate—11,800,00.	160		24-16-1 W.
Price \$650.		Average per M 3.	
F. N. Kennedy, Sept. 1, 1899.	160.20		30-16-1 E.
Estimate—8,800,000, price \$800.		Average per M 9.	
J. E. Hale.	40		1-17-1 E.
A. H. Fiske.	560		36-16-1 E.
Jennie E. Hale, No. 16.	640		36-17-1 W.
Estimate—18,300,00, price \$4,500.00.		Average per M 8½.	
Estimate—36,100.00.			
D. M. Jones, No .30, 1900.	158.52		2-17-1 E.
Estimate—5,400,000, price \$1,000.		Average M 18.	
Jno. Waring, July 24, 1902.	160		14-17-1 W.
Estimate—6,800,000, price 800.		Average M 12.	
M. Emerick, Feb. 5, 1901.	160		35-17-1 W.
Estimate—4,600,000, price 800.		Average per M 18.	
F. C. White, Nov. 27, 1900.	160		8-17-1 E.
Estimate—7,300,000, price \$1,000.		Average per M 13½.	
J. Doyle, Sept. 27, 1899.	160		12-17-1 E.
Estimate—6,600,000, price \$800.		Average per M 12.	
Rose Nettle, Dec. 4, 1900.	160		20-17-1 E.
Estimate—2,950,000, price \$900.		Average per M 30½.	
Albert Dusett, Sept. 11, 1899.	160		20-17-1 E.
Estimate—1,850,000, price \$800.		Average per M 43.	
C. C. Combs, Sept. 11, 1899.	160		26-17-1 E.
Estimate—11,600,000, price \$700.		Average per M 6.	
C. R. Sauers, Sept. 12, 1899.	160		28-17-1 E.
Estimate—11,300,000, price \$900.		Average per M 8.	
(Two deeds.)	160		28-17-1 E.
Estimate—12,100,000, price \$875.		Average per M 7.	
G. H. Gilman, May 16, 1902.	162.31		30-17-2 E.
Estimate—11,100,000, price \$650.		Average per M 6.	
Fred Fisk, Mar. 17, 1902.	40		3-18-1 W.
Estimate—1,850,000, price \$1,000.		Average per M 8½.	
	160		10-18-1 W.
J. D. Hughes, Mar. 17, 1902.	40		3-18-1 W.
Estimate—150,000, price \$1,000.		Average per M 8½.	
	160		10-18-1 W.
Estimate—10,000,000.			

Name.	Date	Acreage	Description.
H. A. Dunbar,	Oct. 24, 1902.	160	10-18-1 W.
(J. M. Huston,	Sept. 23, 1902.	160	10-18-1 W.
Estimate—1.			
Estimate—375. Average per M $10\frac{1}{2}$ .			
M. O. Wilkins,	No. 30, 1900.	160	16-20-2 W.
Estimate—1,450,000, price \$660. Average per M $45\frac{1}{2}$ .			
J. E. Wheeler,	Apr. 11, 1901.	160	34-21-2 W.
Estimate—\$8,000,000, price \$700. Average per M $8\frac{3}{4}$ .			
		Des.	Est.
		(120, 18-23-1 W.	6,800,00
		(160, 24-22-2 W.	11,150,00
		(160, 8-22-2 W.	9,100,000
		(160, 18-22-2 W.	11,250,000
		(160, 18-22-2 W.	12,200,000
Eakin and Bristow, Jan. 12, 1901.....			
		(160, 24-22-2 W.	6,400,000
		(160, 10-22-2 W.	9,300,000
		(157.06, 24-22-7 W.	12,800,000
		(160.75, 18-22-2 W.	13,400,000
		(Price \$4,500, Av. per M 5.	
H. Eakin,	Jan. 12, 1901.	160	30-22-2 W.
Estimate—10,850,00, price \$500. Average per M $4\frac{1}{2}$ .			
J. H. Perkins,	Jan 12, 1901.	160	20-22-2 W.
13,300,000, price \$500. Average per M 4.			
M. Kelebeck,	Jan. 11, 1901.	160	14-22-2 W.
Estimate—8,900,000, price \$800. Average per M 9.			
F. A. Elliott,	Jan. 28, 1901.	160	20-22-2 W.
Estimate—11,050,000, price 960. Average per M $8\frac{1}{2}$ .			
C. H. Jones,	Feb. 2, 1901.	160	18-22-2 W.
Estimate—\$13,000,000, price 800. Average per M 6.			
G. C. Miller,	Jan. 12, 1901.	156.56	12-22-3 W.
Estimate—11,900,000, \$500. Average per M 4.			
Tillie Edwards,	Dec. 22, 1905.	101.44	18-23-1 W.
Estimate—6,450,000, price 700. Average per M 11.			
Average per M given at the nearest half cent.			
Total Estimate			724,950,000 ft.
Total Price			\$63,025.00
Average price per M			.086

Q. These prices that are stated here, were taken from the deeds were they?

A. Yes sir.

Q. And the deeds contained the true consideration paid for the land?

A. Yes sir.

Q. Now, how do these eight claims, or five claims involved in this suit compare in value with the other claims as to the amount of timber and the location?

A. They are just about the same.

Q. Taking these Brumbaugh Creek lands how do these eight claims compare with the other land on that group of claims?

A. They were not so good.

Q. That was a sort of land that had been left over?

A. Yes sir. The more desirable pieces had been taken up prior to this.

Q. Now, I notice that these deeds are made along in 1899, and 1901 and 1902, and so on,—how did the prices of land in there range as compared with what they were in these deeds along for two or three years, was there any change in the value?

A. There was very little change in timber for years in there.

Q. You may state what the value of these claims in suit was, and also the Jordan and Brumbaugh claims were at that time?

A. The value of them?

Q. Yes.

A. We paid all that they were worth at that time.

Q. How long had you been buying timber?

A. In that country?

Q. Yes.

A. I should say four or five years.

Q. You were familiar with the value of timber there?

A. Yes sir.

### Cross Examination.

(Questions by Mr. JOHN McCOURT.)

Q. What was the value of stumpage up in that country at that time—1902?

A. It was worth all the way from five to fifteen cents per thousand.

Q. What was it worth in 1904?

A. Along about the same price.

Q. How did it happen that you paid Roche and Dunbar 1300.00 dollars for their claims?

A. I presume that we wanted to pay them.

Q. You did not pay them the value of their claims?

A. Perhaps not.

Q. Did you ever buy any timber up in that country after 1902, for less than twenty cents stumpage?

A. Yes sir.

Q. Aside from these?

A. Yes sir.

Q. Whose?

A. I do not remember the particular claims, I could perhaps tell you from that list there. I do not remember all of the names or descriptions.

Q. Take the list.

A. After 1902?

Q. Yes and in 1902.

A. Here is one Tillie Edwards the last one, six million four hundred and fifty thousand, \$700.00.

Q. Who was Edwards?

A. She was a lady living in Roseburg.

And here is one Jan. 12, 1901, 10,000,000 feet five hundred dollars.

Q. You paid for that five hundred dollars.

A. Yes.

Q. Is that the true consideration?

A. Yes sir.

Q. E. G. Miller?

A. I do not remember the name, but whatever is there is the true consideration.

Q. How do you know that it is?

A. Because I made the transation, and I know that when there was anything more than a nominal consideration put in the deed, that it was the true consideration.

Q. How about these Dunbar and Roche deeds?

A. What do you mean by that?

Q. The consideration mentioned.

A. I do not know, I am talking about these that are in that list.

Q. It was not so in these deeds?

A. I do not know what the consideration was in those deeds.

Q. If it said eight hundred dollars that was not the real consideration?

A. If it does say that, it is not the true consideration.

Q. It was not the universal rule to place the real

amount in the consideration?

A. It was all the time that I was dealing in land matters.

Q. Did I understand you to say, that after you had phoned Jordon that he came to Eugene and went from there to Cottage Grove and looked at the land?

A. Yes sir.

Q. Did not talk to you about it before he went to see the land?

A. Yes sir.

Q. That was the time you told him that you would advance the expenses?

A. Yes sir.

Q. That is the time he says you told him you would give him one hundred dollars?

A. That is what he says.

Q. He said that you made some objection to it, and that he told him that you could get people to do it for that.

A. I think that is what he testified to.

Q. That was the time that he was testifying there?

A. That is the time I presume, yes.

Q. But all you claim you said to him was that you would advance his expenses and the purchase price of the land?

A. That is all I agreed to do, yes sir.

Q. You did tell him, however, that if he would go down there somewhere,—down the road, that he would meet Brumbaugh, and that Brumbaugh would show him the land?

A. He wanted me to direct him to some one who

would show him the land, which I did.

Q. You had Brumbaugh down there to show people the land?

A. He lived down in there.

Q. You sent all these people down there?

A. What people?

Q. Dunbar, Roache and the La Raut girls?

A. I do not remember that I sent them.

Q. And Stephen and Alice LaRaut?

A. Perhaps I did tell them, or tell some of them that Mr. Brumbaugh would show them the land, he lived down there.

Q. Now, how long was it after he had proven up, that you gave him the hundred dollars, or said that you would give him a hundred dollars?

A. Well I think it must have been three months or four months. I think he proved up in May, and I think I paid him the money in July.

Q. You paid him on the basis of one hundred dollars?

A. I paid him on the basis of five hundred dollars.

Q. One hundred dollars over and above what you had already been out?

A. Yes, one hundred dollars what we had been out.

Q. You did not stop to figure up all the expenses you just simply paid him one hundred dollars?

A. Just lumped it off.

Q. He understood at the time, that that was all that he was going to get?

A. I do not know what he understood,—he did not so understand it from me.

Q. Did not so understand it?

A. No.

Q. You did not expect to get this land for that price?

A. I do not know, but it was all that we could afford to pay.

Q. You knew that that was a pretty good claim?

A. No sir, it was not considered a very good claim, on account of the small timber on it.

Q. It cruised somewhere from nine to ten million, or more didn't it?

A. I do not know what your estimate of it is.

Q. My estimate is fourteen million six hundred thousand.

A. Well that is all there is there.

Q. Nine is your estimate?

A. Yes.

Q. That is a pretty good timber claim?

A. Yes, but there are a great many that went more than that.

Q. When he got through you promised to pay him the sum of one hundred dollars?

A. Yes.

Q. Is that all it is worth?

A. Yes, that is all that it was worth at that time, all we were paying anybody.

Q. All you were paying anybody except Roche and Dunbar.

A. We set it at that figure.

Q. You are sure about that are you?

A. I am pretty sure.

Q. Did not you take the Brumbaugh deed to the

timber?

A. I do not remember.

Q. Look at it and see if it is not about the same time?

A. I do not remember the date of the deed from Dunbar or Mr. Roche.

Q. November 14, 1904,—and Roche's deed is on the same date as Dunbar's deed and Brumbaugh's deed was December 17, following, it was made afterwards?

A. Yes it was made afterwards.

Q. Now in December Brumbaugh's timber was worth just as much as Roche's timber?

A. I do not know what the comparison or estimate was.

Q. You got one for one hundred dollars, and the other for nine hundred dollars over and above what you paid?

A. Yes sir.

Q. And the same in the Dunbar case?

A. Yes sir.

Q. Do you say that you paid Dunbar and Roche more than their claims were worth?

A. Yes sir, a little more than they were worth at that time.

Q. That is all you ever paid Jordan, was one hundred dollars?

A. That is all.

Q. You did not advance him any money since, like you have on these LaRaut claims?

A. I have loaned him money since, but which he never paid.

Q. How much?

A. I loaned him fifty dollars at one time, which he repudiated afterwards.

Q. Was he working for you at that time?

A. No sir.

Q. He was down here somewhere on the Columbia River?

A. No sir, he was in southern Oregon at the time.

Q. He was?

A. Yes sir.

Q. That was shortly after you had met him down here in Portland when the land fraud business was being agitated?

A. No sir, I think it was before that.

Q. You sent him that money in envelope in currency?

A. No sir.

Q. Are you sure of that?

A. I do not know what shape I sent it in.

Q. Got his note for that?

A. I do not think I have, I may have it, I am not positive whether I have or not.

Q. You never demanded payment of it?

A. Yes sir, I did.

Q. Did he say that he had never given it?

A. Yes sir, he said that he would not pay it under any circumstances.

Q. Gave as an excuse for not paying it, that he had rendered services to you in regard to this timber claim?

A. Well that ain't all he said.

Q. What else did he say?

A. Well, he said that he had some advice from somebody not to pay,—some of his friends, I forget who.

Q. Do you remember what the friend's name was?

A. Probably some special agent.

Q. Are you sure that it was a special agent?

A. I think so.

Q. Now when Brumbaugh and Jordan say that you told them that you would give them a hundred dollars for their services in taking the timber claim and turning it over to the company, they do not tell the truth about it?

A. They are mistaken about it.

Q. You say that you told Jordan that you could not make any agreement with him?

A. Yes, he wanted to know what he was going to get.

Q. And you told him that you could not make any agreement with him?

A. Yes.

Q. Did you tell Dunbar the same thing?

A. Yes.

Q. Did you tell Brumbaugh the same thing?

A. Yes.

Q. Was that because he asked you?

A. I think he wanted to know something about it.

Q. You did not tell either one of them that you could get plenty of people to take up claims for one

hundred dollars?

A. No sir, I may have told them that there was lots of people asking me to find locations for them.

Q. Did you tell Harry Dunbar how to make the entries of those expenses in the books?

A. No sir.

Q. You did not tell him to make any of those entries in the stumpage account?

A. No sir, I had nothing to do about making the entries.

Q. How did it come that Dunbar entered those lands up in the stumpage account in the same way as all of the lands of the company about the time you paid these hundred dollars to each of them?

A. I do not know.

Q. Did you have anything to do with the LaRaut claims?

A. No sir.

Q. None of them?

A. No sir, only I think that I may have told Mr. Dunbar who went up with the LaRaut girls, that Mr. Mrumbaugh would take them over the land.

Q. Are you a stockholder in the company at this time?

A. No sir.

Q. Were you at that time?

A. During that time, yes sir.

Q. When did the company have its annual meeting?

A. Well along about the first of February generally.

Q. Is a report made there by the officers of the company?

A. Yes sir.

Q. Of the lands purchased the preceding year and their holdings?

A. I think we generally reported so many acres of land purchased during the year.

Q. Is it not a fact, that ever since 1902, or following 1902 that these lands were included among the lands of the company in your annual report, and so considered?

A. I do not remember of considering them in an annual report.

Q. What mill was the Brumbraugh claims tributary to.

A. Well, they are not really tributary to any mill that was in operation right near the land, they were you might say tributary to the Saginaw mill, or the Springfield mill, we were extending a road up there.

Q. During 1902 say, what value per acre or stumpage value did the assessor of Lane County place upon that land?

A. I do not know.

Q. They assessed it?

A. Yes, but I do not remember,—for a number of years, I do not remember what it was.

Q. Was that land all assessed at the same figure or did you assess each claim separately?

A. I think all of the timber land was put in at about the same rate.

Q. You have some idea about what that is?

A. No, I have no recollection.

Q. Is that a rate per acre?

A. Yes.

Q. And what did the value in Lane County at that time purport to be,—or rather what percentage of the actual value did it purport to be?

A. I do not know.

Q. I have had nothing to do with the assessment or taxation for a number of years, and I do not recollect.

#### Re-Direct Examination.

Questions by Mr. A. H. TANNER.

Q. Did you as a matter of fact ever tell Jordon that you would give him one hundred dollars to get a claim?

A. No sir.

Q. Did you ever have any conversation with Mr. Brumbaugh? As to when it was that he agreed to sell his claim to the company?

A. I do not get your meaning.

Q. I mean did you ever have any conversation with Brumbaugh in which he told you his understanding as to when the agreement was made,—whether it was before he filed on the land or afterwards?

A. I am sure I may be dull, but I do not understand the meaning of your question.

Q. Did you ever have any conversation with Mr. Brumbaugh in which he claimed that some special officer or agent of the government had tried to bulldoze him, or induce him to make an affidavit,—do

you know now what I mean?

A. No.

Q. State what conversation you had?

A. Mr. Brumbaugh told me at the time that these land investigations were going on here, or about that time, that some two months before the time that he told me of it,—I think he said two months,—it was some time previous, that two special agents came to his house and inquired about some land transactions that Messrs. Jones and Cook had had up in that neighborhood, and during this inquiry they asked him about his own claims.

Q. Well what did he tell you that he told them?

A. He told me that he told them just exactly the facts about the matter which was that he had made no arrangement whatever to dispose of his claim until after he had proved up on it. He told me the name of one of the special agents,—I think his name was Watts, and that they undertook to coerce him and make him say some things that he would not say.

Q. Did he say about when that conversation was,—when was this conversation that you had with him?

A. It was something like a month after it occurred,—I do not remember what year it was, or it may have been two months, I do not know.

Q. Did the annual meeting occur in February up there, or was it in January?

A. I think it has been in both months in times past.

Q. How was it in 1902,—was it not in January at

that time?

A. I think it was in January in the earlier years.

Re-Cross Examination.

Questions by Mr. JOHN McCOURT.

Q. How many years ago was it that Brumbaugh gave you this story about the special agent coercing him?

A. I do not know, two, three or four years ago.

Q. Didn't he come down here to Portland about that time?

A. I do not know I never saw him in Portland.

Q. Did not you understand that he was down here before the Grand Jury,—that he was subpoenaed down here at the time the Grand Jury was in session?

A. No sir. I do not know that Mr. Brumbaugh was ever here, if he was I do not know it, he may have been.

Q. You had some other talk with Brumbaugh about this matter since that time?

A. I may have talked to him, I do not recollect.

Q. Did not you talk with him a great deal about this matter before he was a witness here?

A. I never saw Mr. Brumbaugh to speak to him, only nodded to him here in this room.

Q. You did not discuss the matter as to whether or not he should tell the truth?

A. No sir, I never spoke to Mr. Brumbaugh, except once in this room.

Q. Did not you have some conversation about him telling that the consideration for this tract of

land was a little tract of land down there, that he was cultivating?

A. No, sir, I do not remember any conversation about him cultivating any land belonging to me.

Q. He did not have any tract of land belonging to you down there that he could or was using about the time or shortly before the time that you got this land?

A. No, I do not remember, we had no agricultural land down there.

Q. You remember a tract of some bottom land do you remember anything about that?

A. No, I do not.

Q. He did not tell you that anybody coerced him on the stand about three weeks ago to give testimony?

A. I did not hear his testimony.

Q. You were not here at the time?

A. No sir.

Q. Were not you here when Brumbaugh took the stand?

A. No sir.

Q. You do not mean to intimate that he was coerced or intimidated?

A. The time that he was here the other day?

Q. Yes.

A. I never said anything of the kind.

Q. There is not ill-feeling between you and Brumbaugh?

A. Not that I know of.

Q. No reason why he should tell a lie against you

on the stand?

A. I do not know whether there is any reason for it or not, I do not know why he changed his mind about it.

Q. How is that?

A. I do not know why he changed his mind about it.

Q. I do not know either, unless he was telling the truth.

A. I do not know, each time he did not tell the truth.

Q. When he was offering testimony he was under oath?

A. I do not know, he could not have been under oath when he made his proof.

Q. Do you know of anything in this proof that contradicts what he testified to?

A. I do not know what his testimony was.

Witness excused.

GEORGE H. KELLY is called as a witness for the defendant and being first duly sworn testifies as follows:

Direct Examination.

(Questions by Mr. A. H. TANNER.)

Q. State your name, age, resident, and occupation.

A. George Kelly, age 44, residence Portland, Oregon. I have no occupation at the present time.

Q. State what your relations have been towards the defendant the Booth-Kelly Lumber Company.

A. Well, I have been a stockholder in it for a

good many years, and a director, and I was secretary part of the time and I was manager for three years.

Q. Between what dates were you manager of the company?

A. Well, during 1907-8-9.

Q. Whom did you succeed as manager?

A. R. A. Booth.

Q. What position did you hold in the company along in 1902?

A. I do not know whether I was secretary in 1902 or not,—I may have been. I cannot say, but I was a director in the company at that time.

Q. What part of the business or work of the company were you principally looking after at that time?

A. I was looking after the saw-mills.

Q. Did you have anything to do with the buying of timber claims?

A. No sir, not during those years, not before 1907.

Q. Who did look after that?

A. John Kelly at that time mostly.

Q. Now at the time that you became manager of the company and succeeded Mr. Booth, I will ask you to state whether or not Mr. Booth explained to you the condition of these claims that are now in suit here, and if so, what his statement was to you as to the condition under which they were held, and what the relation of the company was at that time to this land.

A. After I was elceted manager he remained around the office for a couple of months helping me straighten out all matters that I was not familiar with and among the unfinished business he explained to me the status of these four La Raut claims,—Stephen La Raut and his wife and these two La Raut girls, Ethel and Lucy.

Q. What explanation did he give to you as to those claims?

A. Well, that those claims did not belong to the company, and that if at any time that land was sold, that these people should share in the proceeds. That he had an understanding with them when they took the claims that he was to carry the claims for them, and that he was a guarantor for whatever amount the company had advanced them on their claims.

Q. And did you as manager of the company agree to that? And accept that understanding of the matter?

A. Yes sir. And at the end of my term I informed Mr. Dixon as nearly as I remember it of the same arrangement, so that he could carry it on as the claims came up.

Q. Then it was the understanding of the officers in charge of the company during all of these years, that those lands were held in that way, was it?

A. Yes sir, that these claims were held as security for money advanced on the order of Mr. Booth.

Q. You may explain, if you know anything about the facts, as to whether the account showing these claims was kept separate from the other accounts?

A. Well, I never knew that, because I never went back into those old records, because I never had any occasion to.

Q. You do not know anything about that?

A. No.

Q. Did you ever know, or have any knowledge of the fact that these parties—these four La Raut people had made deeds to Robert A. Booth,—did you know anything about that?

A. No, I did not know what deeds they had made. I may have known it, but if I did, I have forgotten it.

Q. Were you manager when these second deeds were obtained from them?

A. What year was that, 1907?

Q. Yes.

A. Yes sir, I was.

Q. Do you recall the circumstance of getting the new deeds, the second deeds?

A. Well, I do about Stephen La Raut, and his wife, that is quite clear, because some one was suing him down in Douglas county and we heard something about it in the paper, and we were afraid that his claim would be attached, and then we took the deeds from him and his wife, and I presume we took deeds from the girls at the same time, but I do not recollect just what the reason was for taking deeds from the two girls at that time, but I know that was the reason we took deeds from Stephen La Raut and his wife.

Q. When those second deeds were taken, was it

understood that they were as security the same as it was before?

A. Yes sir, that was all there was about it.

Q. You do not claim for the company, or does the company claim, or did it that by getting those deeds they got title—the absolute title to the land?

A. I, of course took title from Stephen La Raut when he closed up his claim in 1909, when he went to Canada.

Q. Now, was it your understanding as manager, or what was the fact about it, as to whether or not these four people continued to own their land after those deeds were made the same as they had before?

A. Certainly. I considered the deeds were just security for the amount of funds that the company had advanced them.

Q. Now state what you said about closing out with Stephen La Raut and his wife when they went to Canada, state the circumstances.

A. Well, as I remember it was along about the last of 1909 or first of 1910 that Stephen La Raut was yard foreman at Saginaw, and I was up there one day, and he said he had concluded to quit and was going to Canada or to Alberta to take a homestead and wanted to sell his claim. I did not want to lose him, and I tried to talk him out of it. He said he wanted to get out of it, what was coming to him on the claim. Well about a month or two later than that he came to the office as I recollect it, it was just during the annual meeting, or may be a day or two later, and we were very busy, and I took him over to

our small office and he said he had fully made up his mind to quit Saginaw and was going to Canada to get him a homestead and he wanted to clean up his homestead; I asked him what he wanted out of it, and he said that if he could get enough to get him over there he would be satisfied. I went to R. A. Booth and told him what Stephen wanted, and Booth said well, if he is determined to go, you had just as well settle with him, and let him go, so I went back and asked him what he thought he wanted to close the matter up, and he said fifty dollars, and I paid him and took his receipt for it.

Q. When was that do you say?

A. Well, it was between the first and fifth of February, I think, I know that it was just the time of our annual meeting, and Mr. Dixon had just been elected manager or was just going to be, I am not quite certain which it was, anyway Dixon said he didn't want to have anything to do with it, that he was busy and was new in the business and asked me to settle it with him, and I remember the fact that I helped Dixon settle a good many unfinished matters, and that was how I came to close this matter up. I think it was the day after Dixon was elected manager.

Q. While you were manager, was there ever any settlement or adjustment with Ethel La Raut or Lucy La Raut?

A. I think I took deeds from those two girls in 1907, I think it was or near that time.

Q. What I mean is, did those deeds remain as se-

curity to the company as long as you were manager?

A. Yes sir.

Q. And were passed on to Mr. Dixon?

A. Yes, as I explained, sometime between February and April, I stated to Mr. Dixon,—I think it was early in February that I had Mr. Dixon and Mr. Booth and myself up in the office, and Mr. Booth explained to Mr. Dixon as he had to me, and I corroborated his understanding to Mr. Dixon as to how these claims should be carried.

#### Cross-Examination.

(Questions by Mr. JOHN McCOURT.)

Q. Mr. Booth explained to you that he had advanced this money in order to assist these people?

Y. Yes, I believe he did, that is the way he expressed it.

Q. What was timber worth up in that locality per thousand, or what is it worth now?

A. I presume claims as far back from the river as those are are worth twenty or twenty-five cents per thousand.

Q. Are not they worth about fifty cents per thousand?

A. I would not think so.

Q. If they are worth twenty-five cent a thousand four million feet would be one thousand dollars. Did you make any investigation of the amount of timber on the La Raut claim at the time that you closed it out?

A. I do not recall whether I did or not.

Q. Did not make any effort to determine whether you were being fair and square with him, and in your efforts to assist him, or whether you were just simply closing it out like a usurer?

A. It was his own proposition, he came into the office and said that he would take so much money for his claim, and I am not in the habit of giving a man anything more than he asks for.

Q. When you assist a man, you usually assist him?

A. I was not assisting him.

Q. Not assisting him?

A. I was not assisting him.

Q. Did not Mr. Booth say anything to you that it was an outrage to take that man's claim for fifty dollars when he started in to assist him there?

A. No sir.

Q. That it was worth, four, or five or six times that value?

A. I do not recall that he said anything of that kind.

Q. Mr. Booth is very much like you when a man comes and says he will take a good deal less than a thing is worth, he usually takes him up?

A. I presume that he can testify to that better than I can.

Q. Did it ever occur to you when you got this mortgage satisfied to take a quit claim deed or something to show that the mortgage was satisfied?

A. No.

Q. You did not.

A. No.

Q. Do not you know that when a deed is once a mortgage it is always a mortgage, and that it is a mortgage yet if you are correct in your statement?

A. I do not know that.

Q. And that you can never get a title to that land without foreclosure?

A. I do not know that.

Q. You do not know that?

A. No.

Q. You never took any of these deeds before that were mortgages did you up there?

A. I do not recall any besides those.

Q. That was an unusual method of doing business up there in that country?

A. Yes.

Q. If you bought timber before, you usually got the entire title to it?

A. As a rule.

Q. Why did not you put those deeds of the La Rauts to R. A. Booth on record?

A. I do not know that I ever say any deeds from the LaRauts to R. A. Booth.

Q. You heard about it?

A. I heard of it.

Q. You understood that the deed was made to the company, did not you?

A. I do not know that I ever knew.

Q. You thought that company owned those lands until Booth came in and told you about this deal?

A. I knew nothing about it at all, I was at the saw mill and knew nothing about the matters of the company, previous to 1907.

Q. You cannot recall why you got those La Raut girls to make deeds at the same time you got the deed from Stephen La Raut and his wife.

A. No, I do not.

Q. You were not afraid that you would be cheated?

A. I think that was the reason as near as I can recall it. I will state this that Booth had retired from the active management of the company and was no longer a director, and I thought it was better for the company to have security so long as it had put up the money.

Q. When the land was held in that way, why did not you have something to show to the company that those deeds were security?

A. No, that shows that it was a mortgage.

Q. The deeds does not show?

A. A man don't make a transcript of all his papers or of all his contracts in his book.

Q. But where there is a mortgage, it shows on its face.

A. Some times.

Q. Usually.

A. No, I do not think it does.

Q. You and Booth were large holders of the stock in the company at that time as compared with the entire stock?

A. No, we were not large holders.

Q. There is nothing on the records of the company to show the majority of the owners of stock that there was any hold back on these deeds to this land?

A. No, Booth was manager and had had absolute authority to do anything that he wanted to do, and when I was manager of the company I had authority to do the same thing and I was informed of the condition of these deeds and Mr. Dixon knew the same thing.

Q. You did not have any of those sums of money charged to Mr. Booth at all that you advanced?

A. I think there was only one sum of money advanced during my administration, I think that was one payment to Ethel and Lucy La Raut. I cannot say now who it was charged to. My impression is that it was charged to stumpage.

Q. Did you pay that on the order of R. A. Booth, or on your own account?

A. No, I paid it on my own authority.

Q. You did not take a receipt at that time or any memorandum to show the condition of the matter?

A. Simply charged it in the books.

Q. Did you charge it to them, or charge it to this land?

A. I see that it was charged to stumpage on the books.

Q. You carried this loaning business in your account the same as you did other expenses of the land?

A. Yes, in this case there was a stumpage account and a great many things are put into that out-

side of the purchase price of the land.

Q. You understand that outside of the purchase price of the land, a great many things were charged to the land that were expenses.

A. If we made a payment on land, we charged it to stumpage, and as fast as we made payments, we continued to charge it to stumpage.

Q. And if you merely made a loan to an individual and took his land as security it was a different matter from a purchase?

A. No, we would enter it as a part payment and when we sold the land, it would be taken out the same as any other expenses that were made.

Q. What was it that you told Dixon last February?

A. Well, when Stephen La Raut came in, we explained about the Stephen La Raut matter, and he asked me to clean it up, which I did, and we told him the status of the two remaining La Raut claims. That when these girls wanted to sell their claim they could handle them as they saw fit, and that Booth had guaranteed the original amount of money that was put into the claims, but that the title remained in these La Raut girls, and Mr. Dixon so understands it, or did at that time.

Q. It seems strange that you and Booth did not have some memorandum of that kind entered up in the books, so that any officer of the company who should examine the books, or any stockholder, or anybody else interested, might see exactly what that transaction was, and not leave it to the oral tradition of Booth and Kelly and Dixon.

A. Well, the Booth-Kelly stockholders had entire confidence in the people that were managing its affairs, and a man don't put every thing that he knows into writing.

Re-Direct Examination.

(Questions by Mr. TANNER.)

Q. Mr. McCourt asked you if there was any quit-claim deed taken at the time you closed out with Stephen La Raut and Alice La Raut,—did not you take a receipt, showing the settlement?

A. I took a receipt, yes.

Further Cross-Examination.

(Questions by Mr. McCourt.)

Q. What did you do with that receipt?

A. It is filed among the company records, I presume.

Mr. McCOURT: I would like you to produce that receipt.

Q. Did you take a receipt from Lucy and Ethel in 1907?

A. I think not, I know that I took a receipt from Stephen LaRaut.

Q. I would like to have it.

A. We have it somewhere.

(Witness excused.)

Thereupon the taking of testimony herein is adjourned until tomorrow morning January 18, 1911, at 10:30 a. m.

GEO. A. BRODIE,

U. S. Examiner.

Portland, Oregon, Jan. 18, 1911.

10:30 o'clock, A. M.

At this time the parties herein appear before G. A. Brodie, examiner, at the U. S. Grand Jury Room, Portland, Oregon, pursuant to adjournment, and thereupon the following proceedings are had to-wit:

A. C. DIXON is called as a witness for the defendant and being first duly sworn, testified as follows:

Direct Examination.

(Questions by Mr. A. H. TANNER.)

Q. State your name, age, residence and occupation.

A. A. C. Dixon, residence Eugene, Oregon, age thirty-five, occupation, lumberman.

Q. State what position you now hold with the defendant, the Booth-Kelly Lumber Company, and how long you have held that position?

A. I am manager of the company, and have been since I think the first day of February, 1910, or early in February.

Q. Whom did you succeed as manager?

A. Mr. George H. Kelly.

Q. Prior to that time, how long had you been connected with the company, the Booth-Kelly Lumber Company?

A. I have been an employee of the company since March, 1900.

Q. In what capacities?

A. I began as yard foreman, shipping clerk in 1900 at Wendling and was later superintendent of the plant at Coburg,— in June, 1905, I began work as sales manager at Eugene and continued in that capacity until February, 1910.

Q. Did you hear the testimony of Mr. Booth and Mr. Geo. H. Kelly given here before the examiner as to what occurred about these claims referred to as the "LaRaut Claims," about the time you became manager of the company?

A. I did.

Q. You may state what the conversation was at that time, and what the understanding was as you received it from them as to the condition in which those claims were?

A. The matter was brought to my attention about the first of February, I think the first or second day after I was elected manager, and while some of our stockholders and directors were still in the office, and still busy getting rid of the work of the year before. I had known very little of the details prior to that time, and Mr. Kelly came and told me that Mr. LaRaut was there and was going away and wanted to dispose of his rights in his claim, and get what money he was to get out of it at that time. I told him it was something that I was unfamiliar with and asked him for the details, and he told me something about it very briefly I then went with him into Mr. Booth's room and he told me there what Mr. Booth had told him prior to that time, and Booth then told me the details of the transaction all as he related on the stand, and told me of his relationship to the LaRauts,—I do not mean his relationship in law, but his attitude towards them, and what he had done for them at different times, and how they came to take up these claims, and the understanding in re-

gard to the claims, and told me substantially what Mr. Kelly had, that they were going away and wanted to dispose of those claims.

Q. You are speaking of Stephen LaRaut and Alice LaRaut, talking about going away?

A. Yes, at that time he also told me in regard to the claims of Ethel and Lucy LaRaut. He told me that he tried to get Stephen to stay in Oregon, and not go to Canada and not to dispose of his claims finally, but that he had nevertheless decided to go, and since that was the case, it was only fair that we settle up with him at that time. The rest of the conversation, as I remember it was to this effect, that I told Mr. Kelly that I was unfamiliar with the details and had a great many other things to attend to at that time, and while I was willing to accept the responsibility of buying the claims and paying for them, but still I thought if he would agree with Mr. LaRaut as to what the price of the claim should be, that I would see that it was paid, and he did this and Mr. LaRaut and his wife were paid for their claims and receipts were taken. That is all that I remember in relation to those two claims.

Q. That closed out their interest in the claims at that time did it?

A. Yes sir, it did.

Q. Now state whether or not there has ever been any purchase or settlement of the other two claims,—those of Ethel M. LaRaut now Ethel M. Lewis, and Lucy LaRaut?

A. There has been no money paid them, or any set-

tlement effected that I know of since my term of office as manager.

Q. State whether or not you understood from what Mr. Booth and Mr. Kelly former managers of the company told you about these claims, that they were held by the company as security for the advances that had been made?

A. Mr. Booth in that conversation, I think did most of the talking. He told me that the claims of Ethel and Lucy LaRaut at that time were in the same shape and condition as the Stephen and Alice LaRaut claims,—that they were purchased and acquired by these parties with the idea that they might be sold with our timber, and if not, they were to be held until such time as they wanted to dispose of them. We had advanced some money,—what amount, I did not know at that time, and we could hold the possession of the property until it was sold, and if we finally acquired the claims, that there was to be a further sum paid, which was undetermined at that time.

Q. Well as to your understanding now as to the other two claims,—that is, the Ethel M. Lewis claim and the Lucy LaRaut claim it was that they owned the land themselves subject to the mortgage or claim of the company for reimbursement?

A. That is my understanding, that they still have an estate in it, and a say as to what should become of the land, and that they had the right to determine whether we would finally have it, or whether they would sell it for their own purposes, or dispose of it otherwise.

Q. I believe you verified the answer that was filed in this case, the original answer, did you?

A. I think so.

Q. Well, it seems that in the answer,—it has been amended to correct it now by an amendment, but in the original answer, there is an admission or statement that the defendant, the Booth-Kelly Lumber Company is the owner of the equitable, as well as the legal title to the land, and which of course, according to our claim that is not in accordance with the facts—I will ask you to state the circumstances under which you verified the answer, and how that mistake as to these two claims of Ethel M. Lewis and Lucy LaRaut came to be made.

A. As to how the answer came to be written up the way it is, I do not know anything about it, I did not see it until the time that I signed it. I understand that it was prepared in Portland by you, and it was brought in to me by Mr. Woodcock who told me that it was necessary that it should be signed. As I remember it I suggested that Mr. Dunbar might sign it, as he was an officer of the company being secretary and treasurer, and I was not a member of the board of directors, that I was only manager. He said that it was fixed for my signature and without paying attention to the details, or discussing the various points embodied in it, I signed it supposing it was more a matter of form in order to comply with the requirements necessary to get the case for the trial.

Cross Examination.

(Questions by Mr. McCOURT.)

Q. You considered it a pretty heavy responsibility taking over those two LaRaut claims did not you?

A. No.

Q. For fifty dollars apiece?

A. No, it was not a heavy responsibility, but it was something that I did not know the details of.

Q. You spoke of it as though it was a weighty matter that you turned over to Mr. Kelly.

A. I did not intend to give that impression that it was weighty at all.

Q. You did not consider it a very weighty matter to pay fifty dollars for a claim worth anywhere from fifteen hundred dollars to five thousand?

A. I did not consider the matter of responsibility at all, it was something that I was unfamiliar with and that I did not know the details of, like a number of other things that Mr. Kelly straightened up.

Q. You did not know at that time, that those claims run from three million five hundred feet to seven million feet?

A. I do not think I knew what the cruise was at that time, only approximately knew about what it was.

Q. You did know about what it was?

A. Yes, I knew what the country was, and what claims ran up there.

Q. You considered it snap to get those claims for fifty dollars over and above the five hundred dollars that had been expended on them?

A. No I did not consider that.

Q. You did not know that Alice LaRaut's claim car-

ried between seven million three thousand feet?

A. No I did not know the details of the cruise.

Q. Who gave the attorneys their information on which to draw their answer,—did you?

A. Part of it,—I talked it over with the attorneys and I think Mr. Booth did probably.

Q. You did not tell them anything about your holding possession as it has been put in evidence now?

A. It was talked over between us, I do not know who told him.

Q. Who else talked to him besides you?

A. I think Mr. Booth probably and Mr. Dunbar. I do not know where they got all of their information.

Q. None of them gave the attorneys Woodcock and Porter, or who ever it was, that information?

A. I think that was all the information that I had at that time.

Q. You never told them anything about this mortgage business at all?

A. I do not remember all that I told them, or where they got their information.

Q. You do know that you did not tell them anything about that mortgage business at all?

A. I do not know.

Q. You had no reason for having told them anything about it?

A. No.

Q. You had no reason for having told them anything of the kind?

A. I talked it over with them.

Q. That is since you got down here?

A. Before we got down.

Q. You never told any of them that there was any mortgage there, or that they had an equity in this land?

A. I do not know whether I passed the information to them or whether it was given to them in my presence by Mr. Booth. About the time complaint was served, and before the answer was prepared.

Q. Then if they went according to the understanding with Mr. Booth that there was some equity there in those people why did not they include it in the answer, and allege it in the answer and not allege it as they have alleged it?

A. All the facts were related to the attorneys prior to the time the answer was filed.

Q. And the attorneys had overlooked all about this important statement?

A. I think possibly they did. Now most of the talk was with Mr. Woodcock and Mr. Tanner I think drew the answer.

Q. Now, the first you ever heard of this thing, was in February, 1910?

A. No, not exactly.

Q. When was it exactly?

A. I mean not exactly the first time—I do not know the exact date, but in conversation with Mr. Lewis, the husband of Ethel M. Lewis, two or three years prior to that, I understood from him, that his wife had a claim which the company held a deed for, from which he was to receive a further payment if she finally sold to the

company and also that her sister held a claim in the same way.

Q. Who is this man Lewis?

A. He is an employe of the company, sales manager.

Q. Did you have some consultation with Mr. Lewis and Mr. LaRaut, or both in December, 1909, in regard to these claims?

A. No sir.

Q. About the time the special agent was up there investigating them.

A. No.

Q. Ever look at the book of the company to see if there was anything in there about the ownership of the land by the company?

A. I never investigated the books on that line at all.

Q. You did not examine the books in regard to the ownership by the company of these lands?

A. No sir.

Q. So far as you were concerned, you exercised complete ownership over them?

A. Yes.

Q. On behalf of the company?

A. Yes.

Q. Since you have been there?

A. Yes sir.

Q. Who were the board of directors of that company?

A. Who are now?

Q. Qes.

A. Mr. Booth, Dunbar, P. S. Brumby, Mr. Daniher, Mr. Benson, Mr. Cox, Mr. Buck, seven I think.

Q. Were they directors in 1909?

A. Not all of them. There was some changes made 1909.

Q. And in 1910?

A. In February 1910, there was a new board, some of the old members left out.

Q. Who is this man Brumby?

A. He lives in Portland, his name is P. S. Brumby, he is a stockholder of the company and handles timber land and timber property, that is all I know about him.

Q. Now was this matter told the board of directors while you were there?

A. No the board of directors had adjourned and gone before the matter came up.

Q. You never called their attention to it since?

A. I think so. I think that at some meeting during the summer, we did not have a meeting very often, but at some of the meetings we mentioned the matter, I think, about the suit.

Q. Was anything mentioned about this equitable ownership?

A. No.

Q. You did not disclose that to them at all?

A. No, they had all been directors and stockholders as long as I had, and the discussion was about other things.

Q. The discussion was that there had been a suit started to set aside patents to land owned by the company, and not to land upon which they had a mortgage?

A. I do not remember, that there was any discussion, but the information was given that the government was seeking to cancel some patents.

Q. The representation was that it was land owned by the company, and not land upon which it held a mortgage?

A. I do not think there was anything said about it.

Q. The information sought to be disclosed was that it was land owned by the company?

A. I do not think so.

Q. Was there any facts stated about any equitable ownership in anybody else?

A. I do not remember that the case was talked over if it was talked over fully that statement was probably made, but I do not think that anything was given to the directors.

Q. Who prepared the minutes?

A. Mr. Dunbar.

Q. Are all of these things included in the minutes?

A. I do not think there is any mentioned of that of anything of that sort in the minutes. The minutes were very formal.

Q. You did not read them over?

A. No.

Q. You knew some years before that these LaRaut people were related to Mr. Booth by marriage, did not

you?

A. Yes.

Q. It was not that relationship that you speak of that Mr. Booth talked about when you and Mr. Kelly were together?

A. No, I do not mean blood relation, or relationship by marriage, I mean his financial relationship to them—things that he had done for them, and helped them to, in purely a business way, from that standpoint.

Q. Well in exercising those business faculties of yours, if an entire stranger had been in that position and had asked you five hundred dollars or a thousand dollars for the equity Stephen LaRaut had in that claim, you would have considered it would not you?

A. I might have.

Q. Very apt to have acceded to it?

A. It depends upon what understanding I might have had as to the original arrangements with LaRaut. I would have tried to carry that out.

Q. Well, if the original arrangement was that a claim should stand in the name of the company that was worth fifteen hundred dollars and upon which you had only received five hundred dollars, and he had asked you for that a thousand dollars, would you have given it serious consideration?

A. I might have but that was not the fact in regard to this claim, it was not worth fifteen hundred dollars, or anything near that when it was taken up.

Q. What was it worth when he talked it over with you?

A. I think its value would be a matter of opinion.

Q. You would not say it was worth less than fifteen dollars, would you?

A. It would be worth just what he could get for it, all the circumstances being considered.

Q. You have not answered my question, you would not say that it was worth less than fifteen hundred dollars, or was not in February, 1910?

A. It might be.

Q. Possibly it was worth considerable more than that?

A. It might be.

Q. Then, if I understand you, La Raut had that equity of a thousand dollars or more in there, how does it come that you took it over for fifty dollars.

A. I do not understand that he had an equity worth a thousand dollars. I understood that he was to leave the claim there until it was finally sold when he would be paid his share, whatever it was worth when it should be sold.

Q. I thought that you were trying to convey the idea that La Raut had a claim there, and that he was under no obligations to turn the land over to the company, and that it belonged to him when he paid the money that you had advanced.

A. That was the understanding, and if he had come and repaid the money that had been advanced, that would have been a different proposition.

Q. Suppose he had sold the land, and that he had

come and offered you the money, and asked you to release it, would you have done it?

A. I would have inquired into the circumstances.

Q. Yes, but you had inquired into them and you knew all about them.

A. Yes, at that time.

Q. Then at the time we are speaking of, suppose La La Raut had come to you and offered to pay you the five hundred dollars which you had advanced, and wanted a deed to the property, would you have deeded it?

A. I would have no authority to give a deed. I would have to put it up to the directors.

Q. You would have told him to go to grass, would not you?

A. No, I would not have been in a position to do that, I would have put it up to the board of directors, for their action.

Q. Aside from the fifty dollars that you testified about, has the company advanced La Raut any other money since the beginning of 1910?

A. No, not as far as I know.

Q. You have not advanced him five hundred dollars since he went to Canada?

A. No sir.

(Witness excused.)

H. A. DUNBAR is recalled for further Cross-Examination.

(Questions by Mr. JOHN McCOURT.)

Q. Mr. Dunbar, have you brought with you, the ledger for 1902, the Booth-Kelly Lumber Company?

A. Yes.

Q. Will you turn to page three of that ledger upon which appears the stumpage account of the Booth-Kelly Lumber Company?

A. Yes sir.

Q. That account is ruled so that there appears a debit and credit column does it not?

A. Yes sir.

Q. Which is the debit side?

A. The left side.

Q. Now, on Jan. 1st, 1902, it shows a balance on the debit side of \$815,994.07?

A. Yes sir.

Q. Now in that debit side all the purchase price and expenses incurred on behalf of the timber owned by the company?

A. Yes sir.

Q. The whole of them?

A. Yes.

Q. What entries are made on the credit side of that account? ....

A. Such entries as stumpage should received, credit for.

Q. What did they consist of?

A. Well, they consist of the amount of stumpage cut during the year.

Q. And the amount of timber sold?

A. Or timber sold.

Q. Ordinarily wherever tracts of timber are entered in this stumpage account they are entered by description?

A. Yes sir.

Q. And without reference to the name of the party owing the same, or from whom it was secured?

A. Not all.

Q. I say ordinarily?

A. Well, ordinarily the name would not appear in the ledger.

Q. I see an entry here on March 26, 1902, Mohawk, 79,638.88, what does that refer to?

A. That was timber lands bought in the Wendling District that was entered in the Mohawk account and was transferred into the stumpage account.

Q. That was a short method of describing the land in the ledger.

A. Yes sir.

Q. I direct your attention now, to the entries upon July 31st, 1902, and will ask you to read them into the record.

A. Southeast quarter of section two,—twenty-two west. Northwest 34, 21-2 West. \$1,000.00;

Lot 9-10-15-16-28-21 2 West.

Northeast of 26-21-3 West.

Southeast 26-21, 3 West.

Lot 1-2-7-8-28-21-2 West.

Those four Two thousand dollars.

Q. Now, there was no name attached to this at all was there?

A. Not in the ledger.

Q. They are carried into your stumpage account, just the same as all other timber land entries were carried into the stumpage account?

A. They were charged into the stumpage account.

Q. And ever since that time, you have carried the total of the stumpage account forward from time to time and have included those claims in that as part of that stumpage account?

A. Since they were entered?

Q. Since they were entered on July 31st, 1902?

A. Yes.

Q. And never at any time have you excluded them from the total of the stumpage account?

A. No sir.

Q. Now this transcript which the government put in evidence and which was furnished by you covering stumpage was not a ledger entry at all was it, but a journal entry?

A. Well this entry is carried to the ledger.

Q. The account you gave here was not a ledger account at all, was it?

A. Yes.

Q. Is that a ledger account?

A. Yes.

Q. What is that? In that ledger account to show?

A. The description which I just read.

Q. This does not purport to be a copy of that stumpage account in your ledger at all, does it-

A. This is a copy of the stumpage account itemized.

Q. How do you get S. A. La Raut?

A. From the journal.

Q. Is not that what I said?

A. If I understand, you have got to make the journal before you make your ledger.

Q. Turn to your journal and let us see what you have got there.

(Witness turns to journal.)

Q. Now that is where you get this account that you gave us?

A. Sure.

Q. Now where in your ledger is this dollar mark \$301.03?

A. It is included in the item of \$26,236.93.

Q. Entered where?

A. In the journal at page 358.

Q. And where in the ledger?

A. Dec. 31st, 1902.

Q. What did that \$26,36.93 represent, or include? What was the account that it was run into, or made into?

A. That included the cruising for the year 1902, \$23,35.90, and the other account, \$301.03.

Q. Then you included your breakfast and dinner and the expenses out to these claims of the La Raut people and Roche's expenses, and the land office fees in the general cruising account of the Booth-Kelly Lumber Company did not you?

A. The items mentioned are in the Brumbaugh land claim account.

Q. And you carried it into the stumpage account added to your cruising account as a general charge against the stumpage account for expenses during that year?

A. It was carried into and charged against the stumpage account.

Q. A general charge for cruising and other expenses?

A. All expenses were charged to the stumpage account.

Q. What I am getting at is, that this account here of \$301.03 was included in your general expense account covering all land owned by the company, and carried forward to your ledger in that shape?

A. It was at the end of 1902.

Q. And it was not charged at any time to any one of these particular claims in the journal, was it?

A. No, sir it was charged to one account.

Q. I wish you would now turn to your journal of 1902, page 55 in relation to the Brumbaugh land claim, where were they first entered?

A. Entered in the cash book at page fifty-five.

Q. Did you make any entry of those in the journal?

A. No sir.

Q. Did you make these entries at the time the first expense was incurred?

A. I cannot say as to that.

Q. If not, how did you keep track of those small items, 72c, 25c, and the other irregular sums?

A. From a memorandum.

Q. Made when and by whom?

A. Made at the time of the expenses.

Q. What sort of memorandums and where were

they kept?

A. I cannot say, I did I presume.

Q. You made them yourself?

A. I presume I did.

Q. Now, I wish you would turn to your ledger where it says "Brumbaugh Land Claim." There are no entries there containing the names of any of these parties?

A. No, the ledger never shows the name.

Q. Now, then turn to the Ethel La Raut account, and let us see what it looks like,—all of those claims appear upon the same page, or rather all of these accounts against Edward Jordan, Stephen La Raut, Mrs. Stephen La Raut, Ethel La Raut and Lucy La Raut, appear upon the same page?

A. Yes sir.

Q. And they were all closed out on August 12, 1902?

A. Yes sir.

Q. With the exception of the Dan Brumbaugh entry?

A. Yes sir.

Q. Which was not closed until October 30th?

A. That account was not closed in the 1902 ledger.

Q. Not closed in the 1902 ledger?

A. No sir.

Q. What is there in the 1902 ledger to show that it is not closed?

A. The account is not balanced.

Q. The four hundred dollars is carried forward?

A. Yes sir.

Q. Now, then, Lucy La Raut, Ethel La Raut, and Stephen La Raut accounts were closed at that time were they not?

A. Yes sir.

Q. And never opened afterwards?

A. No sir.

Q. You do not carry any such account in your book?

A. No sir.

Q. Never have since that time?

A. No sir, not that I know of.

Q. You would know it if there was?

A. Yes.

Q. Turn to your journal at page 70 under date of March, 1902, the company bought some timber land from D. B. McBride, J. D. Hughes?

A. Yes sir.

Q. A total of \$1504?

A. Yes sir.

Q. That was charged to stumpage at that time?

A. Yes sir.

Q. You also carried the account into the ledger, of D. B. McBride, and J. B. Hughes?

A. Yes sir.

Q. So you kept those two accounts just as much separate as you did any of these La Rauts'?

A. I do not know just what those accounts were.

Q. You do not know just what they were?

A. No, I do not remember those accounts.

Q. You do not remember the La Raut account,

except what you see here, do you?

A. No sir.

Q. Well, the accounts as they appear in the book, are identically the same are they not so far as the bookkeeping is concerned.

A. The accounts are carried to the ledger the same as all accounts?

Q. You stated on yesterday, that you kept these La Raut accounts separately because Robert Booth had told you something about them?

A. Yes sir.

Q. Now, what different scheme did you have than you had to keep the account of D. B. McBride and J. B. Hughes? For instance?

A. I cannot say just why those accounts were opened in that way.

Q. What difference is there between those accounts and the others in your scheme of bookkeeping?

A. Because I was told to keep their accounts separate.

Q. You kept one just the same as the other?

A. You will find accounts all through here.

Q. But you did keep the La Raut account separate?

A. Yes.

Q. And you did not the rest?

A. I kept them so it could be determined what had been paid.

Q. Did not you keep the D. B. McBride and the J. D. Hughes account so you could tell what had

been paid?

A. I certainly did.

Q. There is no difference in your scheme of book-keeping, is what I am getting at?

A. You will find these accounts, all carried to stumpage account.

Q. When you find it, the La Raut account was carried to the stumpage account like any other?

Q. Just the same scheme was not it?

A. Yes.

Q. Carried it right in to its proper place.

A. Yes sir.

Q. Have you got any loan account in this ledger of any money that was loaned on land or anything else?

A. No.

Q. You did not do any of that kind of business?

A. There is no such an account there.

Q. Look at your journal at page 201, to the \$800 item on July 31st.

A. Warring account I find Warring in here.

Q. I wish you would turn to this ledger under the Lucy La Raut account and show me what there is in that account to show the payment of these expenses down to Roseburg.

A. Those expenses were entered in the Brumbaugh group of claims.

Q. If you did not know that there was any Brumbaugh land claim account, how would you find that out?

A. I knew it was in the ledger.

Q. Well, if you had ever charged it to Lucy La Raut, it would be in her account?

A. Yes.

Q. If you had charged it to her at all it would be?

A. Yes sir.

Q. Now, as a matter of fact, the entries that you have made in regard to these claims are just such entries as you would have made if you had been taking up the land for the company, just as if the company had paid or advanced all of their expenses, and the expenses of taking the claim, and the like and they had turned over the claim to the company and had received \$100.00 for their services.

A. If the company had bought the land, they would have been charged to the stumpage account.

Q. They were charged to the stumpage account?

A. Yes, later on.

Q. Just as soon as they could be?

A. I presume they were.

Q. And if the land had never been turned over to the company, they would never have been charged to the stumpage account?

A. They would have stood in the account against the individuals.

Q. And the money advanced, would have stood against the individuals?

A. Those accounts were opened as I have stated, to save time and to keep these claims separate from any other claims.

Q. They were?

A. Yes sir.

Q. What authority did you have to open that account of the Brumbaugh land claims some three months before the titles were turned over to the company?

A. Mr. Booth wanted those accounts separate from the others.

Q. Those claims?

A. Yes sir.

Q. That is, the La Raut claim and the Jordon claim, and the Roche claim and the Dunbar claim, and the Brumbaugh claim?

A. I am referring to the La Raut claims as regards Mr. Booth.

Q. You kept the La Raut claim separate from yours and Roche's and Jordon's account?

A. Our accounts were running accounts.

Q. You did not charge your account with any of the items contained in the Brumbaugh Land Claim account?

A. No sir.

Q. The Brumbaugh land claim account was opened in the books of the company about the time the filings were made upon these lands?

A. Yes.

Q. And all expenses incurred by the Booth-Kelly Lumber Company in regard to these claims were charged to the Brumbaugh land claim account?

A. Yes sir.

Q. And later that entire Brumbaugh land claim

account instead of being charged to the individuals, who took the claims was charged to stumpage account?

A. Yes sir.

Q. Without ever having gone into the accounts of any of the individuals at all?

A. Yes sir.

Q. That was the only separate there was to that group of claims?

A. Yes sir.

Q. That included the Roche claim, the Brumbaugh claim, your claim, Jordon's claim and the four La Raut claims?

A. Yes sir.

Q. And all of those claims were alike charged to stumpage account?

A. Yes sir.

Q. And ever since carried in the stumpage account of the company?

A. Yes sir.

Q. Showing on the books as an asset of the company, consisting of timber land.

A. They show that way?

Re-Direct Examination.

(Questions by Mr. A. H. TANNER.)

Q. Now, you say that the credits in the general stumpage account is for timber cut from the lands?

A. Yes sir.

Q. For the year?

A. Yes sir.

Q. Now suppose that the company did not get the

land,—that is, suppose that he had made payment on the land, for instance,—a partial payment, would it be carried into the general stumpage account?

A. In some cases it would.

Q. Would it not in all cases be carried into the stumpage account as an expense.

A. All expenses are charged to the stumpage account.

Q. Is that not also true as to cruising land which perhaps the company would fail ultimately to get title to?

A. Yes sir, cruising is charged to stumpage.

Q. Now, you referred in your testimony to a Warring claim, and that that was charged direct to stumpage account, what do you mean by that?

A. It was carried from the journal directly into the stumpage account.

Q. Then there was not a separate account of that particular claim?

A. No sir.

Q. But in reference to these Brumbaugh Creek claims, there was a separate account?

A. Yes sir.

Q. From the general stumpage account?

A. Yes sir.

Q. And the items of that Brumbaugh Creek account were traceable into the general stumpage account from this separate special account that was kept as to those claims?

A. Yes sir.

Q. And you say it was kept that way under the

instructions of Mr. Booth?

A. Yes sir.

Q. Now you testified in reference to an entry occurring in the journal for 1902, page 55, where that items of \$260.00 and some occurred that you said was for cruising and so on in addition to the item of \$301.03,—did that item of cruising include the cruising of other lands besides these particular lands in the Brumbaugh district?

A. Yes sir, I cannot say just as to the district but it included the expenses of cruising.

Q. It would include the expenses of cruising all land of the company for the year 1902, would it not?

A. Yes sir.

Q. Is it not a fact that the company some times cruised land that they did not own? And other land that they expected to acquire or were thinking of taking, or acquiring by purchase.

A. They did.

Q. And this item includes all of the expenses for cruising during that year?

A. Yes sir.

Q. Now, I understood you to state that in the ledger accounts that the name of the person from whom the lands were acquired, was not given,—just the description of the land?

A. No sir, they are not given.

Q. You stated that the Ethel La Raut account and the Lucy La Raut account and the Stephen La Raut and the Alice La Raut account appeared in the

books there to have been balanced, what is your custom in regard to ruling down accounts even before they are closed?

A. We rule an account when it balances, then, if there is any new transaction, it follows along in the account after the account is ruled off.

A. Yes sir.

Q. What is the purpose of that?

A. Just simply a method of bookkeeping so you would not have to keep an account back further than the account balances.

Q. There are items occurring in these La Raut accounts after they were ruled down, are there not?

A. Not to those accounts direct. It was not charged to those accounts.

Q. Well, where did those items of payment appear that were made subsequently?

A. In the stumpage account.

Q. They appear in the stumpage account?

A. Yes.

Q. What books of the company had you been referring to in your testimony?

A. The ledger, the cash book, the journal of 1902.

Q. Were those brought here at the request of the government's attorney?

A. They were.

Q. What is the fact as to whether the government officials have had access to these books before?

A. They have had.

Q. When?

A. I do not remember the date, being the later part of December.

## Re-Cross Examination.

(Questions by Mr. JOHN McCOURT.)

Q. I direct your attention to the account of C. Fisher, appearing in the journal at page 245, September 16th, and state what your journal shows?

A. It shows an account against C. E. Fisher.

Q. For what?

A. \$500.00.

Q. What does that charge consist of? As shown by that charge?

A. A payment on account.

Q. Where was that carried in the ledger?

A. To ledger page 79.

Q. Where do you find the next charge against Mr. Fisher?

A. Journal Page 348.

Q. What do you find there?

A. \$1800 on account.

Q. What did that charge consist of?

A. A payment on account.

Q. That was on account?

A. Yes sir.

Q. How was it paid?

A. By check.

Q. That is all charged against Mr. Fisher, or rather that is all the charges against Mr. Fisher appearing in the ledger is it not?

A. Yes sir.

Q. Where do you find a credit to Mr. Fisher?

A. Journal page 247.

Q. Where do you find it there?

A. A credit of \$2300.

Q. What for?

A. For the southeast section 2, 18-1-East.

Q. What do you find in the ledger in regard to that?

A. It was carried to the credit of C. E. Fisher's account in the ledger.

Q. And Mr. Fisher's account is credited for that quarter section of land?

A. Yes sir.

Q. With \$2300?

A. Yes sir.

Q. That balances the account?

A. Yes sir.

Q. What became of the account then?

A. It was closed.

Q. Closed out?

A. Yes sir.

Q. That ended that account?

A. Yes sir.

Q. It has been entered ever since?

A. I cannot say as to that.

Q. So far as this ledger shows it had been?

A. Yes sir.

Q. And so far as appearances are concerned, and so far as the face of the record is concerned, it was just like the La Raut account?

A. It was balanced the same way.

Q. When did that go into the stumpage account?

A. September 17th, 1902.

Q. Turn to your stumpage account, do you find it there?

A. Yes.

Q. There is not a C. E. Fisher entered in the ledger in that account?

A. Not in stumpage account.

Q. Just the description of the land?

A. That was all.

Q. Now then can you describe what the difference is between that Fisher account and the Alice La Raut account for instance, in so far as the ledger is concerned.

A. I do not remember the condition of the particular account.

Q. What differences do the books show?

A. The books show that the accounts were balanced.

Q. It shows the same in the books?

A. It shows that they were balanced, yes sir.

Q. I wish you would hunt that cruising account of \$2600.00,—now then, can you tell me what that item of \$2335.92 was made up of?

A. It closed the cruising account in the ledger.

Q. How did you reach it?

A. The cost of cruising for the year of 1902.

(Witness excused.)

GEORGE KELLY is recalled for further cross examination.

(Questions by Mr. JOHN McCOURT.)

Q. What capacity were you occupying in relation to the Booth-Kelly Lumber Company, in 1902?

A. Well, I was a director in 1902.

Q. Were you directing anything?

A. I was superintendent of their mills?

Q. Of their mills?

A. Yes.

Q. Now that company was acquiring timber was it not down in this Brumbaugh District at that time?

A. Yes.

Q. And prior to that time?

A. I think about 1901, they began to buy in there.

Q. And during all of that time, 1901 and 1902, it had cruisers in that country all of the time?

A. No, not all of the time.

Q. Well, you cruised the entire country?

A. No, not until later than that we never made a systematic cruise of the whole country until in later years. Then we cruised the whole country, or the eastern part of Lane County pretty well everything.

Q. You had Dan Brumbaugh down there in 1901 and 1902?

A. I think he worked a good part of the time, but not all together down in there. He cruised for the company a good many years, in there and in other sections.

Q. You did that for the purpose of ascertaining the quality and quantity of timber in there with a view of securing title?

A. No sir. We have a cruise on nearly everybody's land in the Eastern part of Lane County,—

not only our own, but everybody else's.

Q. You did that for the purpose of, and with a view of acquiring title?

A. We wanted to know what was on the land, so that if at any time we wanted to buy it, if a man came to the office, we would not have to wait ten, fifteen, or twenty days to know whether we would take it or not.

(Defendants rest.)

### REBUTTAL.

GEORGE SORENSON, is called as a witness for the government on rebuttal, and being first duly sworn testified as follows:

### Direct Examination.

(Questions by Mr. JOHN McCOURT.)

Q. What is your business Mr. Sorenson?

A. I am in the timber business.

Q. In Oregon?

A. Yes sir.

Q. How long have you been in that business?

A. About twenty or thirty years.

Q. What have you been doing in your capacity as timber man?

A. Looking timber over, selling and buying it.

Q. In the carrying on of your business, have you become familiar with the value of timber in Oregon?

A. I certainly have.

Q. Have you had any experience in timber down in Lane County?

A. Yes sir.

Q. In Townships 21 and 22 south of Ranges two and three west?

A. Yes sir.

Q. Do you know the district called the Brumbaugh River District?

A. Yes sir, I do.

Q. Were you familiar with the value of timber in that district during the year of 1902 and about that time?

A. Yes sir.

Q. What was the value of timber there at that time?

A. Well, about eight hundred dollars,—about five dollars an acre,—we figured a claim at about five dollars an acre, or eight hundred dollars.

Q. Eight hundred dollars for a quarter section?

A. Yes according to the claim, but the general value was about eight hundred dollars, or five dollars an acre.

Q. Say, for a claim that carried from six to seven million feet of timber?

A. It would be worth eight hundred dollars.

Q. If the claim carried four million feet, what would you say?

A. Well, we would not figure that so much, but when we run the claims out, we run them at about eight hundred dollars.

Q. Eight hundred dollars a claim, taking them one with another?

A. Yes sir, checking them off. Some times we

would get a claim with ten million, or some times they would have four million. We would get the same money.

Q. What was the value of timber in that vicinity, say in February, 1910.

Objected to by defendant's counsel as immaterial.

A. Of course it depends a good deal upon the location of the claim but I would figure anyway about fifty cents a thousand.

Q. Fifty cents a thousand would be about the minimum?

A. Well, about an average. Of course that is for claims coming down to the river, so that a fellow could get out, if he had a claim way back, it would not be worth so much, and I figured about fifty cents a thousand.

#### Cross-Examination.

(Questions by Mr. A. H. TANNER.)

Q. How long did you say that you had been in the timber business in Oregon?

A. Well, close to twenty years.

Q. How many times have you been in this Brumbang Creek Section?

A. I never was in it.

Q. You never were in there to look over the timber?

A. No,—I sold some timber in there though.

Q. You never have been in that section then?

A. No. I have been up North though, but I never was in this timber, but I sold some timber,—sold a bunch of timber in there.

Q. Now, of course the value of these claims here would depend somewhat on the location and accessibility would not they?

A. Sure, that is right, some claims are worth more than others.

Q. And where a man makes it a business of buying timber, he finds out the amount of timber on each claim does he not?

A. Yes sir.

Q. And estimates the value on the cruise of the timber?

A. Yes sir. That is the right way, one claim is worth more than others, but I made an estimate and I would say that any timber in there was worth fifty cent per thousand.

Q. Suppose it only had two or three million feet, it would not be worth eight hundred dollars?

A. Well, it is worth fifty cents per thousand.

Q. I say back in 1902?

A. Well, we estimated it at about five dollars an acre at that time.

Q. Without reference to the timber on it?

A. O, yes, referring to the timber on it.

Q. Of course, to give any estimate as to value of any particular claim, you would have to see the claim, and see the quality of timber?

A. Yes, that is right.

Q. You never saw any of these claims in dispute in this case?

A. I never saw any of them.

Q. Do you know anything about the quality or

character of timber in that section of country,—whether a good deal of it is punky, or rotten?

A. Along the river, there is a lot of very poor timber, punky.

Q. Have you any idea what percentage was punky, or rotten?

A. No.

Re-Direct Examination.

(Questions by Mr. JOHN McCOURT.)

Q. Timber in that region averages up with timber in other localities?

A. Yes sir. Along the river there is a lot of it that is punky, but back of it, it is good timber.

(Witness excused.)

T. B. NEWHAUSER is called as a witness for the government on rebuttal, and being first duly sworn, testifies as follows:

Direct Examination.

(Questions by Mr. JOHN McCOURT.)

Q. What is your business Mr. Newhauser?

A. I am in the investment business?

Q. Did you ever engage in the buying and selling of timber lands?

A. As a broker, yes sir.

Q. Are you in that business yet?

A. Yes.

Q. You know where the Brumbaugh River is in Lane County?

A. I know where it is, yes.

Q. How long have you been engaged in the buying and selling of timber land?

A. Ever since I resigned from the government service.

Q. You used to be in the government service did you?

A. Yes sir.

Q. When you were in the government service Mr. Newhauser, did you have any occasion to become acquainted with some timber land entries made by Stephen, Alice, and Ethel and Lucy La Raut, Edward Jordon, and few others on this Brumbaugh River?

A. I did.

Q. Now those are claims in controversy in this suit,—did you ever buy and sell any timber land in that region?

A. No.

Q. How near is the nearest that you have bought and sold land of those lands here on Brumbaugh River?

A. I never bought or sold any in there, but we have listed some tracts in the immediate vicinity of the Brumbaugh River or Creek up in Lane County.

Q. Well, in your investment business, or timber land business, do you know the value of timber land in this locality?

A. I would say yes, I have a fair idea as to its value.

Q. Is there any difference in the value now as in February, 1910?

A. I would say yes.

Q. It is less now than it was then?

A. I would say that the value of timber is higher.

Q. Higher than it was in February, 1910?

A. Yes sir.

Q. I would like to have you give your opinion with reference to along the first of the year of 1910?

A. I should say probably from 75c to \$1.00, that is in the open market.

Q. You would give seventy-five cents as the minimum value of timber in there?

A. The market price I would say,—that is a year ago.

Q. Depending upon the accessibility and quality of the timber, and the quality on the claim?

A. Well, I should say that price would be for good timber, good sound thrifty timber, not burnt or spotted and not scattering, but for a good growth of timber, entirely heavy sound and thrifty.

Q. What do you mean by "spotted" is that what they call punky?

A. No. Spotted is what they refer to when the tree stands in bunches, and long spaces between them, they call it spotted.

Q. Would the presence of this punk have some effect upon the price?

A. Oh, yes, certainly.

Q. You find that through out all timber, more or less?

A. No, generally where you have a good elevation, a good high elevation, you do not find so much punk in young thrifty growth, you won't find so

much punk. You generally find that in older and mature timber.

Q. You do not know what the value of timber was in 1902?

A. No, I was not in the state at that time, and had not operated, or made any sales at that time.

**Cross-Examination.**

(Questions by Mr. A. H. TANNER.)

Q. You say that you never bought or sold any timber in this Brumbaugh Creek section?

A. No, never bought or sold any in that section.

Q. And of course, you never have been on the land or seen it?

A. No, I have never been on that land.

Q. Your estimate of seventy-five cents or a dollar a thousand is for good sound timber, and as you have already stated if the timber is punky or rotten, or spotted, as you called it, it would not be worth so much?

A. Certainly not.

Q. You do not know of any timber being sold in this Brumbaugh region for from seventy-five cents to a dollar per thousand do you?

A. No, I do not.

Q. Suppose it was shown that people were offering land in that section at thirty cents per thousand, would you consider that it was very much below what it was worth?

A. I should say that it was below the market value.

Q. Now, the market value depends a good deal upon accessibility and the location of the land, does it not?

A. Yes, and it depends some times on the presence of a large company.

Q. That is, that helps to make the market, does not it?

A. No, it helps to spoil the market.

Q. It prevents people from buying you mean?

A. Yes sir.

Re-Direct Examination.

(Questions by Mr. JOHN McCOURT.)

Q. In this case, the Booth-Kelly Lumber Company had monopolized the timber held in that district?

A. I do not know whether the Booth Kelly Lumber Company has monopolized the country there or not, Mr. McCourt, in fact, I do not know exactly where the Booth-Kelly holdings are.

Q. Well, you understand that the Booth-Kelly Lumber Company holds all of the available timber in that country down there, tributary to their mills?

A. Yes sir, that is my understanding.

Q. Is it not a fact that if any considerable quantity of timber could be secured in that locality, that purchasers could readily be secured at seventy-five per thousand for good timber?

A. I should say yes, if a large quantity of timber could be secured.

Q. Well, would you consider a claim very much

spotted that had from 6,350,000 to 7,300,000 on it?

A. Do you refer to a quarter section?

Q. Yes.

A. No, I would not say that was spotted.

Q. There would not be much room for spots on that?

A. Not much room for that.

(Witness excused.)

GEORGE SORENSON is recalled for further cross-examination.

(Questions by Mr. A. H. TANNER.)

Q. I forgot to ask you if you had sold any land or knew of any being sold on this Brumbaugh Creek section, or anywhere in that vicinity?

A. Yes.

Q. Who was it sold to?

A. To the Storey Bracher Lumber Company.

Q. When?

A. About four years ago.

Q. What price did they pay?

A. I think about twenty-five cents per thousand.

It was four years ago.

Re-Direct Examination.

(Questions by Mr. JOHN McCOURT.)

Q. Is timber more value now than it was four years ago?

A. Yes.

Q. What per cent has it increased?

A. I should judge fifty per cent.

Q. You mean by that that it has doubled in value?

A. Yes.

Q. That would be one hundred per cent?

A. Yes it was worth twenty-five cents then, it is worth fifty cents now.

(Witness excused.)

M. A. MARTIN is called as a witness for the government, and being first duly sworn, testified as follows:

Direct Examination.

(Questions by Mr. JOHN McCOURT.)

Q. Where do you live Mr. Martin?

A. Portland.

Q. How long have you lived in Portland?

A. About four years.

Q. Where did you live prior to that time?

A. At Hood River.

Q. What is your business?

A. The timber business and cruising for years.

Q. How many years have you cruised timber?

A. Fifteen years.

Q. Were you ever engaged in the timber business elsewhere than in Oregon?

A. I cruised in Michigan.

Q. How long have you been engaged in the timber business in Oregon, buying and selling timber?

A. Three years.

Q. Prior to that time, you were a cruiser?

A. Prior to that time, I was a cruiser.

Q. In your capacity as cruiser, did you have an opportunity to ascertain the various quantities of timber in the various districts in Oregon?

A. Well, I feel that I know considerable about it,

yes.

Q. You were familiar with the sales that were being made and the value placed upon timber during this time?

A. Yes to a great extent.

Q. Have you ever cruised, or bought, or sold, any timber down in Lane County?

A. Yes sir.

Q. Are you familiar with what is known as the Brumbaugh River District?

A. Well, I made one trip in there to cruise a section.

Q. What section was that?

A. Section 36, 23-2.

Q. West?

A. Yes.

Q. Now, that would not be very far from twenty-one and twenty-two south of two and three West?

A. It would be right south of twenty-two 2.

Q. You were in township what?

A. Section 36, twenty-three 2.

Q. That would be about six miles south of that?

A. Yes?

Q. How long were you in that vicinity at that time?

A. I think about six days.

Q. When was that?

A. Well, I cannot tell you definitely, it was about a year ago last May.

Q. Did you make a general observation of the time in that vicinity and that locality at that time,

along the creek,—the standing timber?

A. Yes, as far as I could see.

Q. Were you acquainted with the value of timber in that locality in 1902 or do you know now the value of timber in 1902, in there?

A. No, I cannot say.

Q. Do you know the value of timber in Oregon in localities similarly situated as to accessibility?

A. Well, yes to a certain extent.

Mr. TANNER: You were speaking of 1902?

A. Yes.

Q. What was the value of timber at that time in that locality, say a timber running from four to ten million feet of timber?

A. Well, I have known timber similarly situated to be bought for twenty-five cents per thousand.

Q. At that time were you in the habit of buying for a flat sum for a claim, rather than for the number of feet carried by a claim, or how was it?

A. Well, yes, that was my observation.

Q. In late years you bought on the stand of timber and the quantity per thousand, ordinarily?

A. Yes sir.

Q. What was the value of timber in that locality, say in February, 1902?

A. Well, it is kind of difficult.

Q. That would be about the time that you were down there?

A. We sold that section for about fifty cents.

Q. That was a fair value of it at that time?

A. Well, that was all that we could get for it.

Q. Did you sell it to Booth-Kelly Lumber Company?

A. No.

Q. Do you know of any other claim being sold in there at that time?

A. I do not.

Q. Either before or since?

A. No.

Q. How much was there,—you figured it by the section?

A. Yes.

Q. You sold the entire section at that rate?

A. Yes.

#### Cross-Examination.

(Questions by Mr. A. H. TANNER.)

Q. How long have you been in this country did you say Mr. Martin?

A. In Portland?

Q. In Oregon, in this section of the country.

A. I have been here nearly twelve years.

Q. Were you in this part of the country during 1902?

A. Well, I did considerable work out of Portland about that time?

Q. You say that you have been in the cruising business about three years in Oregon?

A. No, I have been in the timber business about three years.

Q. Buying and selling timber?

A. Well, to a certain extent, yes.

Q. For yourself, or for other people?

A. Well, for myself and other people too.

Q. Do you own any timber now?

A. Yes.

Q. Where?

A. I have got an interest in the Siletz.

Q. How much is there of it?

A. I do not know.

Q. A large tract?

A. Just a single claim.

Q. Where was this section that you spoke about that you cruised with reference to Brumbaugh Creek or River?

A. Well, it is quite near the head I believe. I know that I swung up the Brumbaugh and went up the Creek or a branch of the Brumbaugh. It is on the head of the creek.

Q. Well, upon the mountain was it?

A. Yes.

Q. Did you go down the river when you came out?

A. Yes.

Q. Down to Coburg?

A. No. I came back down the Brumbaugh, and went on to Cottage Grove.

Q. Did you notice the character of the timber down along the stream?

A. In a general way, yes.

Q. What is the fact as to more or less of it being punky and rotten?

A. Well, I suppose there is. This section that I

cruised had lots of defects in it.

Q. That effects the value of a claim more or less, does not it?

A. Well, yes it does.

Re-Direct Examination.

(Questions by Mr. JOHN McCOURT.)

Q. That was one of the reasons that you could not get more than fifty cents a thousand, was it not?

A. Well, no,—it might have been, but I do not think it was though. The punk was thrown out, when we cruised.

Q. You cruised sound timber?

A. Yes.

Q. That is the ordinary way of cruising timber the punky stuff is thrown out.

A. Yes.

Q. Now, this claim that you have, would that be any more accessible to mills or the market, than land situated in twenty-one and twenty-two south of two and three?

A. I think land in 21 and 22 south 2 West would be probably handier to railroad facilities.

Q. Yours is a little more remote?

A. Yes.

Q. Now, land situated, say in the southeast quarter of section 2, township 18, south of range 1 east, in 1902, would land so situated be any more valuable than these lands in 21 and 22 south of range two west?

A. Well, I cannot say that there was much difference in value.

Q. A claim that brought \$2300.00 in one of those localities then, would probably be about the same price as another?

A. Well, I suppose somewhere around there, yes.

Q. That is where I refer to.

A. Yes.

#### Re-Cross Examination.

(Questions by A. H. TANNER.)

Q. You never saw these particular claims involved in this suit?

A. I do not know the description of them at all.

Q. Well they are in section 28, township 21 south of 2, and in section 2, township twenty-two, south range 2, and section 26, township 21, south range 3?

A. Well, I cannot say, the way I went.

Q. That is you mean, you were not able to pick out these particular claims to testify anything about them.

A. I paid no attention. I did not look for any corner, because my business was to go on.

Q. You do not know anything about these claims themselves?

A. No.

(Witness excused.)

C. W. MEAD is called as a witness for the government on rebuttal, and being first duly sworn, testified as follows:

Direct Examination.

(Questions by Mr. JOHN McCOURT.)

Q. Where do you live Mr. Mead?

A. I live in Portland.

Q. How long have you lived in Portland?

A. About twenty years.

Q. What has been your business for several years last past?

A. Timber cruising and inspecting timber.

Q. In your experience as a cruiser, have you become acquainted with the value of timber?

A. Yes, in a general way I have.

Q. You have had personal knowledge of numerous tracts in the sale and purchase of timber?

A. Yes.

Q. Were you engaged in that business in 1902?

A. Yes sir.

Q. Did you ever do any cruising in the locality of these tracts on Brumbaugh River?

A. Only in a general way. I made a trip up this creek one time to see what the timber was in there in a general way. I did not look at any particular piece, I was only in there about four days?

Q. When was this?

A. That was about ten years ago, I cannot tell exactly.

Q. Did you go in there for your own personal information?

A. Yes, my own.

Q. You say that you have a general idea of the character of the timber in that locality?

A. Yes I had at that time.

Q. Do you know what the value of timber was in that locality in 1902?

A. Well, only judging from other localities, similar to this, that is all.

Q. Well, so judging it, what is your opinion as to the value of timber in that locality upon a claim running from four to six and ten million feet per quarter section?

A. At that time, I remember it, timber could be bought from twenty-five to fifty cents per thousand,—that was the asking, that is for good timber,—I mean for fir and cedar. Of course, there was quite a little hemlock in there at that time, hemlock was not considered worth hardly anything.

Q. What was the market value of timber say in there in 1901, for good timber?

A. Well, I think it was about double what it was before when I was in there.

Q. From 50c to \$1.00?

A. Yes sir.

#### Cross-Examination.

(Questions by Mr. A. H. TANNER.)

Q. Have you bought any timber?

A. Not in that locality.

Q. You never saw these claims in dispute?

A. Not that I know of. I cannot say that I was ever across them,—I just went up through the valley,—up one side and down the other.

Q. You say that your impression is that in 1902,

the asking price was from 25c to 50c per thousand?

A. Yes sir.

Q. That is what people who had timber to sell wanted to get for it?

A. That is what I understood at that time, yes sir.

Q. You do not know whether the buyers gave that or not do you?

A. I do not know.

Q. If a man has a piece of timber to sell, he generally asks a pretty good price for it, don't it.

A. Some times he does, and some times he don't.

(Witness Excused.)

Plaintiff rests. Defendant rests.

UNITED STATES OF AMERICA,

District of Oregon—ss.

I, Geo. A. Brodie, Examiner of the above entitled court do hereby certify that on the 19th day of December, 1910 the parties herein appeared before me at the U. S. Grand Jury Room in the City of Portland, Multnomah County, Oregon, in the District of Oregon, at the hour of 1:30 P. M., the complainant, the Government of the United States, appearing by Mr. John McCourt, U. S. Attorney for Oregon, and the defendants appearing by Messrs. A. H. Tanner and A. C. Woodcock, and thereupon the taking of testimony herein on behalf of the respective parties was begun before me, it being agreed by and between the parties that said testimony should be taken down by me in shorthand and afterwards tran-

scribed into typewritten script and certified as being a true and correct transcript, and when so taken transcribed and certified that the same should be respectively, the signing of the depositions by the respective witnesses to all intents and purposes as if duly and regularly subscribed by the witnesses respectively, the signing of the depositions by the respective witnesses, being expressly waived by the parties. That thereafter the taking of testimony was adjourned from day to day until the 18th day of January, 1911, at which time the taking of testimony herein was completed.

I further certify that before proceeding with the taking of the testimony of the respective witnesses herein they and each of them were by me duly sworn to tell the truth the whole truth and nothing but the truth in answer to interrogatories to be propounded to them by counsel.

I further certify that the foregoing is a true and correct transcript of the testimony and proceedings had before me herein and of the whole thereof.

Dated this 9th day of March, 1911.

GEO. A. BRODIE,

U. S. Examiner.

[Endorsed]: Filed March 10, 1911.

G. H. MARSH,

Clerk District of Oregon.

And afterwards, to wit, on the 8th day of April, 1912, there was duly filed in said Court, a Petition for Appeal in words and figures as follows to wit:

(Petition for Appeal.)

*In the District Court of the United States for the Ninth  
Judicial Circuit and District of Oregon.*

THE UNITED STATES OF AMERICA,

Complainant,

vs.

BOOTH-KELLY COMPANY, a corporation, ED-  
WARD JORDAN, STEPHAN A. LA RAUT,  
ALICE LA RAUT, ETHEL M. LA RAUT  
and LUCY LA RAUT,

Defendants

The United States of America, complainant above named, conceiving itself aggrieved by the decree entered in the Circuit Court of the United States for the above mentioned Circuit and District in the above entitled cause on the 9th day of October, 1911, hereby appeals from said decree to the United States Circuit Court of Appeals for the Ninth Circuit, for the reasons specified in the assignment of errors which is filed herewith, and prays that the appeal be allowed, and that a transcript of the records, proceedings and papers upon which said decree was made, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit, and your petitioner prays that said decree may be reviewed and reversed.

Dated April 6, 1912.

JOHN McCOURT,

United States Attorney for the District of Oregon,  
and Solicitor for Complainant.

[Endorsed]: Petition for Appeal. Filed Apr. 8,  
1912.

A. M. CANNON,

Clerk U. S. District Court.

And afterwards, to-wit, on the 8th day of April, 1912, there was duly filed in said Court, an Assignments of Error in words and figures as follows to-wit:

**[Assignments of Error by Plaintiff.]**

*In the District Court of the United States for the Ninth  
Judicial Circuit and District of Oregon*

THE UNITED STATES OF AMERICA,

Complainant,

vs.

BOOTH-KELLY COMPANY, a corporation, ED-  
WARD JORDAN, STEPHEN A. LA RAUT,  
ALICE LA RAUT, ETHEL M. LA RAUT  
and LUCY LA RAUT.

Defendants.

The United States of America, complainant above named, asserts that in rendering the decree in the above entitled cause on the 9th day of October, 1911, the said Circuit Court of the United States for the District of Oregon for the Ninth Circuit, erred in the following particulars to-wit:

FIRST: In dismissing the bill of complaint herein as to the four patents bearing date August 3, 1904, and each of them, and and the lands described therein, issued respectively to Stephen A. La Raut, Alice La Raut, Ethel La Raut and Lucy La Raut, and described in the bill of complaint. This was error because the evidence in the case sustained, proved and established the conspiracies, frauds, irregularities and notice thereof complained of, alleged and charged in the bill of complaint, in connection with the entries of

said lands and the conveyances thereof.

SECOND: In failing and refusing to make and enter a decree herein in accordance with the prayer of complainant's bill of complaint, declaring null and void the said patents issued respectively to Stephen A. La Raut, Alice La Raut, Ethel La Raut and Lucy La Raut, and dated August 3, 1904, and setting aside, revoking and cancelling said patents and directing that the several deeds of conveyance from said entrymen to the defendant Booth-Kelly Company, for the lands described in said patents, be delivered up and surrendered for cancellation and cancelled, and ordering and decreeing that the lands embraced in the several patents to be the perfect property of complainant free and clear of all claims of the defendants, and ordering, adjudging and decreeing that the defendant Booth-Kelly Company execute and deliver to complainant a good and sufficient deed or deeds conveying the said lands described in said patents free and clear of all liens, incumbrances, outstanding claims or clouds whatever, to the complainant in fee simple absolute. The failure and refusal of the Court in the respect mentioned in this assignment was error because the evidence in the case sustained, proved and established the conspiracies, frauds, irregularities and notice thereof complained of, alleged and charged in the bill of complaint, in connection with the entries of said lands and the conveyances thereof.

THIRD: In dismissing the bill of complaint as to the said four patents of August 3, 1904, and the land described therein, instead of rendering and entering

a decree as to said patents and each of them, and said lands described therein, and the conveyances of said lands by the several entrymen to the defendant Booth-Kelly Company, as prayed for by complainant in its bill of complaint, the conspiracies, frauds, irregularities and notice thereof set forth in the bill of complaint, having been clearly and fully sustained, proved and established by the evidence introduced and presented to the court by complainant.

JOHN McCOURT,

Solicitor for Complainant and United States Attorney for the District of Oregon.

[Endorsed]: Assignment of Error. Filed Apr. 8, 1912.

A. M. CANNON,

Clerk U. S. District Court.

And afterwards, to wit, on the 8 day of April 1912, there was duly filed in said Court, an Order Allowing Appeal in words and figures as follows to-wit:

[Order Allowing Plaintiff's Petition for Appeal.]

*In the District Court of the United States for the Ninth  
Judicial Circuit and District of Oregon.*

THE UNITED STATES OF AMERICA,

Complainant,

vs.

BOOTH-KELLY COMPANY, a corporation, EDWARD JORDAN, STEPHEN A. LA RAUT, ALICE LA RAUT, ETHEL M. LA RAUT and LUCY LA RAUT,

Defendants.

Now on this day came the United States of America, complainant herein, by its counsel John McCourt, United States Attorney for the District of Oregon, and presented its petition for an appeal, accompanied by an assignment of errors, which petition, upon consideration of the Court is hereby allowed, and the Court hereby allows an appeal herein to the United States Circuit Court of Appeals for the Ninth Circuit.

Dated at Portland, Oregon, this 8th day of April, 1912.

R. S. BEAN,  
Judge.

[Endorsed]: Order allowing Appeal. Filed Apr. 8, 1912.

A. M. CANNON,  
Clerk.

And afterwards, to wit, on the 8 day of April, 1912, there was duly filed in said Court, a Citation on Appeal in words and figures as follows to wit:

**[Citation on Appeal to the Defendants.]**

UNITED STATES OF AMERICA,

District of Oregon—ss.

To Booth-Kelly Company, a corporation, Stephen A. La Raut, Alice La Raut, Ethel M. La Raut and Lucy La Raut,

Greeting:

WHEREAS, The United States of America has lately appealed to the United States Circuit Court of Appeals for the Ninth Circuit from a decree rendered

on October 9, 1911, in the Circuit Court of the United States for the District of Oregon, in your favor, and has given the security required by law; you are, therefore, hereby, cited and admonished to be and appear before said United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, within thirty days from the date hereof, to show cause, if any there be, why the said decree should not be corrected, and speedy justice should not be done to the parties in that behalf.

Given under my hand, at Portland, in said District, this 8th day of April, in the year of our Lord, one thousand, nine hundred and twelve.

R. S. BEAN,  
Judge.

UNITED STATES OF AMERICA,  
District of Oregon—ss.

Due and legal service of the within citation is hereby acknowledged and accepted this 8th day of April, 1912, within Multnomah County, State of Oregon, by receipt of a duly certified copy thereof.

A. H. TANNER,

Of Attorneys and Solicitors for the Defendants, Booth-Kelly Co., a corporation, Stephen A. La Raut, Alice La Raut, Ethel M. La Raut and Lucy La Raut.

[Endorsed]: Citation on Appeal. Filed Apr. 8, 1912.

A. M. CANNON,  
Clerk.

And afterwards, to wit, on the 8 day of April, 1912,

there was duly filed in said Court, a Petition for Appeal in words and figures as follows to wit:

[Petition of Defendant Booth-Kelly Co. for Appeal.]

*In the Circuit and District Court of the United States  
for the 9th Judicial Circuit and District of Oregon.*

UNITED STATES OF AMERICA,

Plaintiff,

vs.

THE BOOTH KELLY LUMBER CO., EDWARD  
JORDAN, STEPHEN A. LA RAUT, ALICE  
LA RAUT, ETHEL M. LA RAUT and  
LUCY LA RAUT,

Defendants.

To the Honorable Robert S. Bean, District Judge and  
one of the Judges of the above entitled Court,  
presiding therein:

The above named defendant, the Booth-Kelly Lumber Company, a corporation, considering itself aggrieved by that part of the order and decree made and entered in the above entitled cause and Circuit Court on the 9th day of October, 1911, wherein and whereby it was and is ordered, adjudged and decreed that the patent heretofore, to-wit, on the 3rd day of August, 1904, issued to Edward Jordan for Lots 7, 8, 9 and 10, of Section 2, in Township 22, South Range 2 West, Willamette Meridian, and the deed from said Edward Jordan and wife to the said defendant the Booth-Kelly Lumber Company to the said land, which said patent and deed are particularly mentioned and referred to in the plaintiff's bill of

complaint, be and are set aside, cancelled and held for naught, and that the plaintiff herein be decreed to be the owner of said real property, free and clear of all claims of said defendants, and that the said defendant the Booth-Kelly Lumber Company execute and deliver to the plaintiff a good and sufficient deed conveying said land to the said plaintiff in fee simple absolute, and that in case it shall fail, neglect or refuse to make such deed that said decree should operate as such deed of conveyance, for the reasons set forth in the assignment of errors which is filed herewith, and it prays that this, its petition for its said appeal, may be allowed, and that a transcript of the records, proceedings and papers upon which said decree was made, duly authenticated, may be sent to the United States Circuit Court of Appeals for the 9th Circuit.

A. C. WOODCOCK,  
and A. H. TANNER,

Solicitors for Defendant the Booth-Kelly Lumber Co.

[Endorsed]: Petition for Appeal. Filed Apr. 8, 1912.

A. M. CANNON,  
Clerk U. S. Court.

And afterwards, to wit, on the 8 day of April, 1912, there was duly filed in said Court, Assignment of Error in words and figures as follows to wit:

[Defendant's Assignments of Error.]

*In the Circuit Now District Court of the United States  
for the 9th Judicial Circuit and District of Oregon.*

UNITED STATES OF AMERICA,

Plaintiff,

vs.

THE BOOTH-KELLY LUMBER CO., EDWARD  
JORDAN, STEPHEN A. LA RAUT, AL-  
ICE LA RAUT, ETHEL M. LA RAUT and  
LUCY LA RAUT,

Defendants.

Comes now the defendant the Booth-Kelly Lumber Company, a corporation, and alleges and files herein the following assignment of errors, upon which it will rely upon the prosecution of the appeal in the above entitle cause from that part of the decree from which the appeal is taken :

I.

The Court erred in entering said decree or any decree in this cause against this defendant, setting aside, cancelling and annulling the said patent issued by the plaintiff to Edward Jordan, for Lots 7, 8, 9 and 10, of Section 2, Township 22, South of Range 2 West, of the Willamette Meridian, and the deed from said Edward Jordan and wife to this defendant.

II.

The Court erred in not dismissing the plaintiff's bill of complaint as to said real property so patented to said Jordan by the said plaintiff, and by him deeded to this defendant.

III.

The Court erred in not holding and finding in and by its said decree that the said patent so issued to

said Edward Jordan, and the entries and proceedings relating thereto, were taken and had in good faith, and in not holding and reciting that the deed from said Edward Jordan and wife to this defendant was made in good faith, and without any intent to defraud the plaintiff out of said land.

A. C. WOODCOCK,

and A. H. TANNER,

Solicitors for Defendant the Booth-Kelly Lumber Co.

[Endorsed]: Assignment of Errors. Filed Apr. 8, 1912.

A. M. CANNON,

Clerk.

And afterwards, to wit, on the 8 day of April, 1912, there was duly filed in said Court, an Order Allowing Appeal in words and figures as follows to wit:

**[Order Allowing Defendant's Appeal.]**

*In the Circuit Now District Court of the United States  
for the 9th Judicial Circuit and District of Oregon.*

UNITED STATES OF AMERICA,

Plaintiff,

vs.

THE BOOTH-KELLY LUMBER CO., EDWARD  
JORDAN, STEPHEN A. LA RAUT, AL-  
ICE LA RAUT, ETHEL M. L ARAUT and  
LUCY LA RAUT,

Defendants.

On motion of A. H. Tanner, Esq., Solicitor and of

counsel for defendants, it is Ordered that an appeal to the United States Circuit Court of Appeals for the 9th Circuit, from that part of the final decree heretofore filed and entered herein, as set forth in the petition for said appeal, be and the same is hereby allowed, and that a certified transcript of the record, testimony, exhibits, stipulations and all proceedings herein be forthwith transmitted to the United States Circuit Court of Appeals.

It is further ordered that the bond of said appeal be fixed at Two Hundred and Fifty Dollars, the same to act as a supersedeas bond, and also as a bond for costs and damages on appeal.

Dated April 8, 1912.

R. S. BEAN,  
Judge.

[Endorsed]: Order Allowing Appeal. Filed Apr. 8, 1912.

A. M. CANNON,  
Clerk U. S. District Court.

And Afterwards, to wit, on the 8 day of April, 1912,

There was duly filed in said Court, a Bond on Appeal in words and figures as follows to wit:

**[Defendant's Bond on Appeal.]**

*In the Circuit Now District Court of the United States  
for the 9th Judicial Circuit and District of Oregon.*

UNITED STATES OF AMERICA,

Plaintiff,

vs.

THE BOOTH-KELLY LUMBER CO., EDWARD  
JORDAN, STEPHEN A. LA RAUT, AL-

ICE LA RAUT, ETHEL M. LA RAUT and  
LUCY LA RAUT,

Defendants.

KNOW ALL MEN BY THESE PRESENTS, That the Booth-Kelly Lumber Company, a corporation, as principal and Geo. H. Kelly as surety are held and firmly bound unto the United States of America, plaintiff, above named in the full and just sum of Two Hundred and Fifty (\$250) Dollars to be paid to it, it's successors or assigns for which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents.

Whereas lately at a session of the above entitled court in a suit pending in said court between the United States of America, plaintiff, and the above named defendant, a decree was rendered in part against the said defendant, the Booth-Kelly Lumber Company, and said company having obtained from said court an order allowing an appeal to the United States Circuit Court of Appeals for the 9th Circuit to reverse that part of the said decree so rendered against the said Booth-Kelly Lumber Company, defendant aforesaid, and a citation is about to be issued citing the plaintiff, the United States of America, to be and appear at the United States Circuit Court of Appeals for the 9th Circuit to be holden at San Francisco, California.

Now the condition of the above obligation is such that if the said Booth-Kelly Lumber Company shall prosecute its said appeal to effect, and shall answer

all damages and costs as may be awarded against it, if it fails to make good its plea, then the above obligation is to be void; otherwise, to remain in full force and virtue.

BOOTH-KELLY LUMBER COMPANY,

By A. H. Tanner,  
Its Attorney.

GEO. H. KELLY.

STATE OF OREGON,

County of Multnomah—ss.

I, Geo. H. Kelly, being first duly sworn, say that I am the surety named in the foregoing bond, and that I am a resident and free-holder in the State of Oregon and am worth the sum of Five Hundred (\$500) Dollars over and above all my debts and liabilities, and owner of property exempt from execution.

GEO. H. KELLY.

Subscribed and sworn to before me this 8th day of April, 1912.

[Seal.]

ALBERT H. TANNER,  
Notary Public for Oregon.

[Endorsed]: Bond on Appeal. Filed Apr. 8, 1912.

A. M. CANNON,  
Clerk U. S. District Court.

And afterwards, to wit, on the 8 day of April, 1912, there was duly filed in said Court, a Citation on Appeal in words and figures as follows to wit:

[Citation on Appeal to Plaintiff.]

UNITED STATES OF AMERICA,

District of Oregon—ss.

To The United States of America,

Greeting:

WHEREAS, The Booth-Kelly Lumber Company has lately appealed to the United States Circuit Court of Appeals for the Ninth Circuit from that part of a decree rendered in the Circuit Court of the United States for the District of Oregon on the 9th day of October, 1911, in your favor, and has given the security required by law; You are, therefore, hereby, cited and admonished to be and appear before said United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, within thirty days from the date hereof, to show cause, if any there be, why the said decree should not be corrected, and speedy justice should not be done to the parties in that behalf.

Given under my hand, at Portland, in said District, this 8 day of April, in the year of our Lord, one thousand, nine hundred and twelve.

R. S. BEAN,  
Judge.

UNITED STATES OF AMERICA,

State of Oregon,

County of Multnomah—ss.

Due and legal service of the within citation is hereby accepted, admitted and acknowledged at Portland, Oregon, this 8 day of April, 1912.

JOHN McCOURT,  
United States Attorney for Oregon.

[Endorsed]: Citation on Appeal. Filed Apr. 8, 1912.

A. M. CANNON,  
Clerk U. S. Court, Oregon.





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IN THE  
**United States Circuit Court of Appeals**  
NINTH CIRCUIT

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THE UNITED STATES OF AMERICA,  
Plaintiff and Appellant,  
vs.

BOOTH-KELLY LUMBER COMPANY, a Corpora-  
tion, STEPHEN A. LARAUT, ALICE LARAUT,  
ETHEL M. LARAUT and LUCY LARAUT,  
Defendants and Appellees,

And

BOOTH-KELLY LUMBER COMPANY, a Corpora-  
tion,  
Defendant and Appellant,  
vs.

THE UNITED STATES OF AMERICA,  
Plaintiff and Appellee.

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*Appeal and Cross-Appeal from the United States  
District Court, District of Oregon.*

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JOHN McCOURT,  
United States Attorney for Oregon.

**FILED**

OCT - 7 1912



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IN THE  
**United States Circuit Court of Appeals**  
NINTH CIRCUIT

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THE UNITED STATES OF AMERICA,  
Plaintiff and Appellant,  
vs.

BOOTH-KELLY LUMBER COMPANY, a Corpora-  
tion, STEPHEN A. LARAUT, ALICE LARAUT,  
ETHEL M. LARAUT and LUCY LARAUT,  
Defendants and Appellees,

And

BOOTH-KELLY LUMBER COMPANY, a Corpora-  
tion,  
Defendant and Appellant,  
vs.

THE UNITED STATES OF AMERICA,  
Plaintiff and Appellee.

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*Appeal and Cross-Appeal from the United States  
District Court, District of Oregon.*

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STATEMENT OF CASE.

This suit was begun in the United States Circuit Court for the District of Oregon on May 24th, 1910. The suit was brought to cancel five patents for public

lands issued to as many patentees under the timber and stone act, on the ground that the initial applications were fraudulently made by the applicants for the use and benefit of the defendant Booth-Kelly Lumber Company, and under and with the understanding, and agreements between the said company and the entrymen respectively, made prior to the entries, that they should each convey the land entered by them to said company.

The bill of complaint alleged that the defendant Booth-Kelly Lumber Company paid and advanced all fees, costs and expenses and the purchase price of said land. The names of the entrymen and patentees referred to are as follows: Stephen A. La Raut, Alice La Raut, Ethel M. La Raut (now Ethel M. Lewis), Lucy La Raut, and Edward Jordan.

The lands entered by them and described respectively in the patents sought to be set aside by this suit will be hereinafter described.

On September 21st, 1910, the defendants, with the exception of the defendant Edward Jordan, filed an answer herein denying that the defendant Booth-Kelly Lumber Company furnished any of the money above mentioned and denying the fraud charged; and the defendant Booth-Kelly Lumber Company affirmatively pleaded therein that it was the owner by purchase in good faith from the entrymen respectively of all said lands in controversy. Defendant Jordan did not appear or answer and a decree of *pro confesso* was taken against him.

Complainant thereafter filed a replication and the case was referred to a Master to take and report the testimony and evidence to the Court. The taking of testimony was begun on December 19th, 1910. On said last mentioned date before the taking of testimony was commenced, the defendant Booth-Kelly Lumber Company, and the defendants Ethel M. La Raut and Lucy La Raut, asked permission to amend the answer thereto fore filed by them:

"So as to admit that the defendant the Booth-Kelly Lumber Company is the holder of the legal title to the lands entered by and patented to Ethel M. La Raut and Lucy La Raut but denying that it is the equitable owner of said land, and alleging affirmatively that said Ethel M. La Raut, now Ethel M. Lewis, and Lucy La Raut ever since said patents were issued to them have been and now are the equitable owners of said land, and that the deeds made by them to the Booth-Kelly Lumber Company were intended to be and were in fact mortgages, to secure the payment of certain advances made and to be made to them by said Company, to enable them to enter and pay for said land and for other purposes."

Afterwards the taking of testimony was completed and on July 19th, 1911, the cause was argued and submitted to the Court. The cause was taken under advisement by the Court and on the 9th day of October, 1911, an opinion and decree was entered therein cancelling the patent issued to the defendant Edward Jordan and

dismissing complainant's bill as to the four La Raut entries. From this decree both the complainant and the defendant Booth-Kelly Lumber Company have appealed.

### EVIDENCE.

Numbers refer to pages of printed Transcript of the Record.

The defendant Booth-Kelly Lumber Company sometime prior to the entries in controversy had the land embraced therein cruised (135, 139, 467). The company was acquiring lands in this vicinity during 1901 and 1902 (467). Up to 1907, R. A. Booth was manager of the defendant company (297). Between January, 1902 and January, 1903, J. H. Booth was Secretary of the company and Receiver of the United States Land Office at Roseburg, Oregon (297); John F. Kelly was vice-president of the company and subject to the direction of the manager, attended to the purchase of lands (394), George Kelly was a director in the company and had charge of its saw mills. He was manager in 1907-1908-1909 (423). In 1902 the company had saw mills at Saginaw, Coburg, Wendling and Springfield, Oregon, and owned and purchased large tracts of land tributary to these mills for operating purposes, besides making some purchases upon speculation. (299, 394). Lands in controversy are tributary to Saginaw and Springfield mills (417).

Stephen, Ethel and Lucy La Raut are brother and sisters respectively of the wife of R. A. Booth; Alice La Raut is the wife of Stephen La Raut (165, 299).

At the time the entries were made, all the applicants were in the employ of the company except Lucy La Raut, and Alice, the wife of Stephen La Raut (151, 165, 243). All were in poor financial circumstances (151, 173, 210, 267).

At the request of John F. Kelly, D. H. Brumbaugh, a cruiser in the employ of the company, a day or two before they filed, showed the several entrymen and entrywomen their claims, (139, 140). Alice La Raut, Stephen La Raut, Lucy La Raut and Ethel La Raut, took their claims, under a prior agreement with Booth that they were to be paid \$100.00 each for doing so, over and above the costs and expenses of the claims, (147, 152, 158, 160, 163, 164. Edward Jordan entered his claim under a similar agreement with John F. Kelly (242 to 273).

D. H. Brumbaugh and probably H. A. Dunbar and Thomas Roche, all in the employ of the company, took claims at the same time under similar circumstances, (273 to 297).

In accordance with said prior agreements all details of perfecting title were attended to by the defendant company and preliminary expenses were paid by it, the applicants giving no attention whatever thereto. (136, 138, 148, 151, 167, 173, 186, 187, 196, 202, 244, 248, 294-7).

The records of the Land Office and the entry papers introduced in evidence show the following:

Applicant.	T.& S.S.S. Filed	Publication	Witnesses Advertised
Mrs. Alice La Raut	Feb. 7, 1902	Nugget	Stephen A. La Raut* George Riggs James Lee Daniel H. Brumbaugh*
Stephen A. La Raut	Feb. 7, 1902	Nugget	Mrs. Alice La Raut* George Riggs James Lee Daniel H. Brumbaugh*
Edward Jordan	Feb. 14, 1902	Nugget	Thomas Roche* Dan Brumbaugh* Oscar Lee John Palmer
Ethel M. La Raut	Feb. 17, 1902	Nugget	Orin Robinson D. N. Brumbaugh* Harry Dunbar* Lucy La Raut
Lucy La Raut	Feb. 17, 1902	Nugget	Orin Robinson Harry Dunbar* Ethel La Raut D. H. Brumbaugh*

Nugget—Bohemia Nugget—C. J. Howard, Publisher.

\*Witness testified on final proof.

Company paid for publication and charged same to its stumpage account. It made no charge therefor against the individuals (294-7).

T & S	Applicant	Cert.	Date Proof	Description
2026	Stephen La Raut	9241	May 7, 1902	NE 1, 26-21, S-3-W.
2027	Alice La Raut	9242	May 7, 1902	SE 1, 26-21-3,
2030	Edward Jordan	9239	May 7, 1902	Lots 7-8-9 & 10, Sec. 2. 22 S., 2 W.
2045	Lucy La Raut	9246	May 8, 1902	Lots 1-2-7 & 8, Sec. 28. 21 S., 2 W.
2046	Ethel M. La Raut	9244	May 8, 1902	Lots 9-10-15 & 16, Sec. 28, 21 S. R., 2 W.

Both filings and proof made before local officer of Roseburg Land Office.

Applicant	Purchase Money.	Fees.	Deed to B-K.	Patent Issued.
Edward Jordan	\$400.00	\$10.51	July 22, 1902	Aug. 3, 1904
Stephen A. La Raut	400.00	10.48	July .., 1902 Mar. 4, 1907	Aug. 3, 1904
Alice La Raut	400.00	10.51	July .., 1902 Mar. 4, 1907	Aug. 3, 1904
Ethel M. La Raut	407.05	10.49	July .., 1902 Sept. 6, 1907	Aug. 3, 1904
Lucy La Raut	407.05	10.49	July .., 1902 Sept. 6, 1907	Aug. 3, 1904

All patents delivered to Frank A. Alley, November 9, 1904, at request of John F. Kelly. (241).

The Company paid purchase price of land to Government and all fees and expenses upon final proof (136-138, 197, 199, 294-7). In July, 1902 following the final proofs in May previous, each of the applicants executed and delivered deeds for the land to the company or to R. A. Booth and each received from the company \$100.00 (159, 160, 171, 201, 290-1).

The Edward Jordan deed was dated July 22, 1902 but was not recorded until September 6th, 1907. (235).

The four La Raut deeds were not recorded but were retained until the latter part of 1904 or early in 1905, when the land fraud investigations and prosecutions in Oregon were in progress, when they were returned to the makers and destroyed. (171, 201, 328-9, 334). This was done probably because of the relation of the parties to Booth. About this time Dunbar and Roche, bookkeepers for the company were each paid \$800.00, ostensibly on account of their claims. (292-294). The La Rauts made other deeds in 1907. Lucy and Ethel were each paid \$25.00 upon execution of the later deeds. 175, 184, 192, 212, 237, 240, 294). Three years after executing their second deeds, when they were about to go to Canada, and agents of the Government were making inquiry about their entries, and shortly before this suit was commenced, Stephen and Alice La Raut were each paid \$50.00 by the company. (149, 157, 164, 294, 334, 335, 426, 447-8).

The applicants and patentees never saw the lands entered by them except when Brumbaugh took them to the land before the entries were made. They never made any effort to dispose of them, never inquired the value thereof or the amount of timber thereon or took any interest whatever therein; never inquired as to the expense of the entries or whether taxes were being paid thereon, notwithstanding they were always in poor circumstances. (170, 187-8, 203-9, 325-6).

The books of the company show that it assumed control and ownership of these lands immediately after proofs, and charged itself with all expenses relating to

these lands, beginning with its cruise thereof up to the present including taxes (297, 315, 316, 337 to 375, 443, 448 to 466, 459-460).

The books of the company show the following entries and no others relating to these claims:

(Transcript pages 289 to 297).

EDW. JORDAN

1902

May 8, J. 108-Check.....	\$ 400.00	
Aug. 7, J. 209-Credit to J. F. Kelly	100.00	
Oct. 23, J. 279 Charge to stump- age for Lots, 7, 8, 9, 10, Sec. 2, Tp. 22, 2 w. ....		\$ 500.00
	<u>\$ 500.00</u>	<u>\$ 500.00</u>

S. A. LA RAUT.

1902.

May 8, J. 108-Check.....	\$ 400.00	
July 31, J. 200-Check.....	134.50	
July 31, J. 199 Credit.....		\$ 34.50
July 31, J. 199 Charge to stump- age for NE¼ Sec. 26, Tp. 21, 3 w. ....		500.00
	<u>\$ 534.50</u>	<u>\$ 534.50</u>

MRS. S. A. LA RAUT.

1902.

May 8, J. 108-Check.....	\$ 400.00
July 31, J. 200 Check .....	100.00

July 31, J. 199 Charge to stump-		
age for SE $\frac{1}{4}$ Sec. 26. Tp. 21,		
3 w .....	\$	500.00
	<hr/>	
	\$	500.00
	\$	500.00

## ETHEL LA RAUT.

1902.

May 8, J. 108-Check.....	\$	400.00	
July 31, J. 200 Check .....		100.00	
July 31, J. 199 Charge to stump-			
age for lots 9, 10, 15, 16, Sec.			
28, Tp. 21-2 West .....	\$	500.00	
	<hr/>		
	\$	500.00	\$ 500.00

## LUCY LA RAUT.

1902.

May 8, J. 108-Check.....	\$	400.00	
Aug. 12, J. 213 Check.....	\$	100.00	
July 31, J. 199 Charge to stump-			
age for Lots 1, 2, 7, 8, Sec. 28,			
Tp. 21 2 w .....	\$	500.00	
	<hr/>		
	\$	500.00	\$ 500.00

## THOS. ROCHE.

1902.

May 8, J. 108-Check.....	\$	400.00	
July 31, J. 199 Charge to stump-			
age for SE $\frac{1}{4}$ Sec. 2, Tp. 22,			
2 w .....	\$	500.00	

1904.

Dec. 31, J. 246 Charge to stump-	
age for SE¼ Sec. 2, Tp. 22,	
2 West .....	\$ 800.00

## H. A. DUNBAR.

1902.

May 8, J. 108-Check.....	\$ 400.00
July 31, J. 199 Charge to stump-	
age for NW¼ Sec. 32, Tp. 21,	
2 West .....	\$ 500.00
1904. J. 246 Charge to stump-	
age for NW¼ Sec. 34, Tp. 21,	
2 West .....	\$ 800.00

The above last two accounts are not closed, as salaries are credited and money charged as needed, but above are all entries regarding claims sold.

## D. H. BRUMBAUGH.

1902.

May 8, J. 108-Check.....	\$ 400.00
June 11, J. 148 Compass.....	8.00
Oct. 30, J. 285 Check .....	56.50

1903.

May 19, J. 136 Check.....	100.00
Sept. 22, J. 260 Check .....	70.00
Nov. 16, C. 205 Check, cash ....	10.00
Dec. C. 221 Check, J. F. Kelly..	10.00
Dec. 16, J. 223 Cash .....	5.00
Dec. 31, J. 330 Check .....	83.25

1904.

Feb. 29, J. 38 Check .....	74.45
Aug. 31, J. 169 Check .....	100.00
Sept. 30, J. 189 Check .....	399.84

1902.

Oct. 23, J. 279 Cruising on Teeters Creek for J. F. Kelly, Trustee	\$ 64.50
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1903.

Dec. 15, J. 327 J. F. Kelly, Trustee .....	70.00
Dec. 15, J. 327 Cruising .....	108.25

1904.

Feb. 25, J. 33 Cruising in Jackson Co. ....	74.45
Sept. 23, J. 183 Charged to stumpage for NE $\frac{1}{4}$ Sec. 34 Tp. 21, 2 w .....	500.00
Nov. 30, J. 225 Cruising and fire patrol .....	499.84
	<hr/>
	\$1,317.04 \$1,317.04

## STUMPAGE.

1902.

July 31, S. L. La Raut, NE $\frac{1}{4}$ Sec. 26, Tp. 21, 3 w .....	\$ 500.00
July 31, Mrs. S. A. La Raut, SE $\frac{1}{4}$ Sec. 26, Tp. 21, 3 w .....	500.00
July 31, Ethel La Raut, Lots 9, 10, 15, 16, Sec. 28, Tp. 21, 2 w .....	500.00
July 31, Lucy La Raut, Lots 1, 2, 7, 8, Sec. 28, Tp. 21, 2 w .....	500.00

July 31, Thos. Roche, SE $\frac{1}{4}$ , Sec. 2, Tp. 22, 2 w .....	500.00
July 31, H. A. Dunbar, NW $\frac{1}{4}$ Sec. 34, Tp. 21, 2 w .....	500.00
Dec. 31, Brumbaugh Land Claims .....	301.03
1904.	
Sept. 23, D. H. Brumbaugh, NE $\frac{1}{4}$ Sec. 34, Tp. 21, 2 w. ....	500.00
Dec. 31, Thos. Roche, SE $\frac{1}{4}$ Sec. 2, Tp. 22, 2 w. ....	800.00
Dec. 31, H. A. Dunbar, NW $\frac{1}{4}$ Sec. 34, Tp. 21, 2 w. ....	800.00
1907.	
Sept. 9, Pay't on Lots 1, 2, 7, 8, and Lots 9, 10, 15, 16, Sec. 28, Tp. 21, 2 w. ....	50.00
1910.	
Feb. 3, S. A. La Raut, Pay't on NE $\frac{1}{4}$ Sec. 26, Tp. 21, 3 w. ....	50.00
Feb. 3, Mrs. S. A. La Raut, Pay't on SE $\frac{1}{4}$ Sec. 26, Tp. 21 3 w. ....	50.00
	<hr/>
	\$6,051.00
	<hr/>

## BRUMBAUGH LAND CLAIMS.

1902.

March 18, C. 55:

Adv. Ethel La Raut .....	\$ 8.00
Adv. H. A. Dunbar .....	8.00
Adv. Lucy La Raut .....	8.00
Adv. S. A. La Raut .....	8.00
Adv. Alice La Raut .....	8.00

Adv. D. H. Brumbaugh .....	8.00	
Adv. Thos. Roche .....	8.00	
Adv. Edw. Jordan .....	8.00	\$ 64.00
		<hr/>

## March 18, C. 55:

Fare, Dunbar, Saginaw .....	\$ .72	
Supper .....	.25	
Breakfast and dinner .....	.50	
Fare, Eugene .....	.72	
Fare, Lucy La Raut, Saginaw..	.72	
Fare, A. H. Dunbar, Saginaw..	.72	
Supper 25c, breakfast 25c.....	.50	
Orin Robinson, cruising .....	1.50	
Fare, E. & L. La Raut, Roseburg	4.50	
Supper and bed .....	.75	
Hotel bill, E. L. La Raut .....	1.50	
F. E. Alley .....	3.00	
Hotel bill, H. A. Dunbar .....	.75	
Fare, E. La Raut, Saginaw ....	2.26	
Fare, H. A. Dunbar, to Eugene..	3.00	\$ 21.39
		<hr/>

## March 20, J. 65:

S. A. La Raut .....	9.00	
Ethel and Lucy La Raut .....	3.00	
H. A. Dunbar .....	4.50	
Guy La Raut .....	.50	
Lunch, E. & L. La Raut .....	.80	\$ 17.80
		<hr/>

## June 3, C. 117:

2½ days by D. H. Brumbaugh,	
2.50 .....	8.75

Fare to Roseburg & return .....	4.30	
Board & Lodging .....	1.75	
Fare to Roseburg & return .....	5.15	
Board & Lodging .....	1.25	
Fare to Roseburg & return .....	5.15	
Board .....	.50	
O. Robinson .....	9.30	\$ 36.15
		<hr/>

July 19, J. 189:

2 tickets, Eugene to C. G. ....	\$ 1.65	
Meals &c. ....	1.00	
Pd. Brumbaugh, meals, etc ....	2.10	
Pd. Chrisman & Bangs, horses..	6.00	
Ex. at C. G. ....	1.50	
2 tickets, Roseburg .....	4.65	
Meals .....	.50	
2 tickets, Roseburg to Eugene..	6.00	\$ 23.40
		<hr/>
Forward .....	\$162.74	
		<hr/>

1902.

Forwarded \$162.74

July 19, J. 189:

Recording Fee .....	\$ 10.00	
Testimony .....	.45	
Fare, Roseburg & return .....	6.00	\$ 16.45

July 19, C. 151:

Fare, Eugene to Roseburg .....	3.00	
Ethel Ec. & Filing .....	20.00	
Lucy, Ec. & Filing .....	10.00	
H. A. D., Ec. & Filing .....	10.50	

Add'l filing fees .....	14.10	
Hotel, La Raut girls .....	1.50	
Fare, Ethel, Saginaw to Rose- burg and return .....	4.52	
Fare, Lucy Wilbur, to Roseburg and return .....	.72	
Hotel, H. A. D. ....	2.00	
Roseburg, Eugene .....	3.00	\$ 69.84
		<hr/>

## July 19, C. 153.

July 19, C. 153, D. Brumbaugh ....	\$ 12.50	
July 19, C. 153, D. Brumbaugh ticket .....	3.00	\$ 15.50
		<hr/>

July 31, J. 199, S. A. La Raut .....	34.50	
July 31, J. 201, Saginaw invoice .... 1902.	2.50	
Dec. 31, J. 358, Charge to stump- age .....		301.03
	<hr/>	<hr/>
	\$301.03	\$301.03

The stumpage account contained somewhere close to 150,000 acres (359). The total of \$301.03 above, made up of small items of expense upon said claims, designated "Brumbaugh Land Claims," was no where charged to the individuals but was carried into the stumpage account under the general item "Cruising." (452-3, 448 to 466).

The claims contained the following quantities of timber :

	Company Cruise	Government Cruise
Ethel Lewis	7,700,000 Feet	10,250,000 Feet
Lucy La Raut	3,600,000 Feet	4,100,000 Feet
Stephen La Raut	6,350,000 Feet	7,000,000 Feet
Alice La Raut	6,750,000 Feet	7,300,000 Feet
Edward Jordan	9,400,000 Feet	14,000,000 Feet

The government cruise was made to secure comparative rather than actual amounts of timber on the claims.

In 1902 these lands were worth from 25c to 50c per thousand feet and 1910 from 75c to \$1.00 per thousand feet (468 to 487).

Defendant Company by propounding leading questions to Lucy and Ethel La Raut, and by the introduction before the Master of a number of self serving declarations made by Booth, the Kellys, and A. C. Dixon, and by an absurd attempt to explain the bookkeeping by H. A. Dunbar, attempted to sustain its pretended defense that the conveyances of the La Rauts were in fact mortgages. To appreciate fully the utter failure of this attempt and the absurdity thereof in the face of the indisputable facts in the case, the entire testimony of the following persons must be read:

Lucy La Raut, 164 to 193, see particularly page 191.

Alice La Raut, (now Lewis), 193 to 227.

R. A. Booth, 298 to 336.

George Kelly, 423 to 434, 466-8.

H. A. Dunbar, 337 to 375, 448 to 466.

A. C. Dixon, 435 to 448.

## ARGUMENT.

The issues upon these appeals present questions of fact rather than question of law. The Government contends that the evidence and testimony adduced upon the hearing, as a matter of law, requires a cancellation of all the patents described in the bill. Considerable of the evidence which the Government relies upon to secure cancellation of the patents is circumstantial in its nature, and the conclusions to be adduced from the circumstances mentioned were disputed by some oral testimony in the case with reference to the four La Raut claims.

This contradiction in the evidence, in the judgment of the Court below, left the Government's evidence in such a state that it did not overcome the respect due to the patents or the presumption of innocence which attended their issuance. It is contended by the Government upon this appeal that the Court below gave too much weight to the oral testimony and pretended explanations offered by the defendants' and too little weight to the circumstances showing the manner and agreements under which the entries were made; and the conduct of the defendant Booth-Kelly Lumber Company and the control exercised by it over the lands in question, both before and after the entries. It is believed a proper construction of the facts as shown by the circumstances and the acts of the parties, renders the pretended explanations of the defendants and entrymen absolutely absurd and untenable, and unerringly points to the truth of the allegations in complainant's bill of complaint, and fully justifies and demands a can-

cancellation of all the patents involved in the suit.

The rule that the burden is on the Government in these cases to overcome the presumption of innocence and good faith evidenced by the patents, by clear and convincing proof, and that the wrong alleged should be clearly and fully established, is recognized and accepted by the Government as the law in this case; and it is with that rule in mind that this argument is presented; and with entire confidence that with the rule applied, the evidence rightfully construed fully establishes the right of the Government to a cancellation of all the patents involved in this suit.

Before the claims in controversy were filed upon, the Booth-Kelly Lumber Company had the lands cruised, together with other lands in that vicinity, and was then and had been for a year prior thereto engaged in purchasing timber lands in that vicinity.

That it was the intention of the Company to acquire title to the lands in controversy in this suit is evidenced by the fact that title was immediately taken to the Dunbar, Roche, Brumbaugh and Jordan claims. That Alice and Stephen La Raut entered the land in behalf of the defendant company through an arrangement with R. A. Booth is shown by the fact that the matter was the subject of family conversation, as related by the witness Mrs. Applestone, which occurred about the time the entries were made, or immediately prior thereto. These conversations gave the amount to be received by the entrymen as \$100.00 each, for the services in making

the entry on behalf of the company. The books of the company show that these parties did, subsequently, actually receive the sum of \$100.00 within a few weeks after they had made proof, and thereupon deeds conveying the absolute title to the company were made.

It is true that R. A. Booth asserted in his testimony in the case that these deeds were made to him, but it is submitted in the light of the other assertions of Mr. Booth and the probabilities of the case that the deeds were likely made to the Booth-Kelly Lumber Company.

The conversations testified to by Mrs. Applestone constitute competent evidence for the reason that they occurred at a time when the conspiracy to deprive the Government of the title to the lands involved in the case was in process of execution. The admissions and declarations of Mrs. Alice La Raut and Stephen La Raut, two of the conspirators, as a matter of law, will be deemed the admissions and declarations of all of the conspirators.

Its books show that those in charge of the company considered all of the expenses made looking toward the perfection of these entries, as their own and not that of the individuals, and that the acts of the parties in making the entries were merely services being rendered to the company. Beginning with the initiation of the entries every item of the expense is charged in the books of the company to the general expenses of said company in relation to timber lands and the same carried into the stumpage account or timber land account of the com-

pany. No account was opened in the books or kept therein with any of the entrymen until proof had been made upon the claims, and all expenses incident thereto had been paid. Then accounts are opened with each of the entrymen; deeds taken from each of them, the execution of which concluded and fully complied with the contracts and agreements which each of the entrymen clearly had entered into before taking their respective claims; payment of \$100.00 was made to each of them for compliance with their said contract, and the services performed thereunder in perfecting the entries, and each of said accounts was immediately closed. None of the said accounts were ever again opened up to the time of the trial of this cause, and the lands embraced within these claims were immediately carried into the general land account of the company and treated as an asset thereof and as a part of their timber land holdings. Thereafter the Company paid the taxes thereon in a lump sum with their other lands and without any segregation of the charge for taxes against said lands from the total amount paid by it as taxes upon its lands generally. None of these deeds, however, were placed upon the record. That, in itself, was irregular and under the circumstances very suspicious. None of the entrymen ever saw the lands entered by him or her after they were taken thereto by D. H. Brumbaugh at the direction of Booth or John Kelly, prior to entering the same. No steps were ever taken by any of them to ascertain the quantity of timber upon the claim entered by him or her or to ascertain the value thereof; no effort was made to dispose of the same to anyone else; no inquiry

was made as to the amount of expense incurred in perfecting the entry; no inquiry was made about taxes, whether the same were paid, or who was paying them. In short: Nothing was done by any of the entrymen or entrywomen except to render such services in perfecting the entry as they were directed to do by members of the Booth-Kelly Lumber Company. Their lack of interest and total indifference to the nature and cost of the transaction and their utter ignorance of the character and value of the property acquired by their entries can be accounted for upon no other reasonable hypothesis than that they were acting as mere agents and servants of the Booth-Kelly Lumber Company in making the same.

That people like the La Rauts, in poor financial circumstances, would not at any time over a period of several years, take any interest in or make any inquiry about a timber claim owned by them, worth from \$800.00 to \$2500.00, at the time of entry and thereafter worth for several years from \$2000.00 to \$4000.00 for the poorest claims and from \$5000.00 to \$10,000.00 for the best claim, is too ridiculous and absurd to be given serious consideration.

The evidence in this case more clearly establishes the fraudulent character of the entries, than the evidence in the following cases:

United States vs. Detroit Lumber Company  
131 Federal 668,  
200 U. S. 321, 339.

Gibson vs. United States (Ninth Circuit)  
185 Federal 484.

In each of the cases mentioned the courts held that the oral testimony of the parties in which fraud was denied, was overcome by the indisputable circumstances in the cases.

The defense as to the claim of Edward Jordan is made up entirely of the denial of John F. Kelly of the statement of Edward Jordan that he, Jordan, did enter into an agreement with John F. Kelly in behalf of the Booth-Kelly Lumber Company, by which Jordan agreed to enter the claim in behalf of the Booth-Kelly Lumber Company and convey it to them after proof should be made thereon. John F. Kelly admits the other facts in the case testified to by Jordan and shown by the books of the company and the records of the general land office, but denies the truth of this one statement of Jordan, notwithstanding that the books of the company and the entries therein and the records of the general land office, and all of the circumstances surrounding the entry, together with the dominion and control and ownership exercised by the company over the land at all times after the entry was made, and the payment of taxes thereon, emphatically corroborate the testimony of Jordan. To submit argument to show that the Jordan entry was fraudulent would be like arguing that it is day when the sun is shining.

The defense as to the four La Raut entries amounts to this; that they were all in poor financial circumstances; that Robert Booth, who was related to them by marriage, desired to assist them to secure timber claims in order that their financial condition might be improved.

To that end, he, Booth, volunteered to advance, either by himself or through the Booth-Kelly Lumber Company, the funds necessary to perfect the entries; that when proof had been made, he induced the parties to execute deeds, which were taken by himself or the Booth-Kelly Lumber Company as security for the funds advanced; that in 1910, settlement was had with Stephen and Alice La Raut by which they parted with their pretended equity in the lands to the Company upon payment of the sum of \$50.00 to each of them; that no settlement up to the time of trial had been made with Lucy and Ethel La Raut and that they still owned an equity in their respective claims.

R. A. Booth testified that this was a fact. Lucy and Ethel La Raut, in a feeble way, tried to corroborate him, so did George Kelly, who succeeded Booth as Manager of the Company, and A. C. Dixon who was Manager at the time this suit was commenced and at the time of the trial. That this pretended defense is not true and cannot be true is absolutely shown by the evidence.

If it were true the books of the company would show an account in the ledger against each of these parties, in which would be entered and accounted for each item of expense, as to the particular entries. Such an account does not appear. There would also be in the cash book and journal from which the ledger would be made up, appropriate charges of the several items of expense against each of the parties respectively. The land embraced in the several entries would not in such case be

carried into the general invoice account of land owned by the company, but would be kept separately in the account of each individual and some appropriate indication would be given in each of the said accounts that whatever title the Booth-Kelly Lumber Company had to the lands, was held as security for the money advanced to each entryman. The deeds taken from each entryman, were this defense true, would have been openly and regularly placed upon the public records in the same manner as deeds taken by the company in the regular course of business were. The taxes on the lands would have been paid separately and charged from year to year against the individual accounts of the entrymen; interest would also have been charged against each of them. Without a consciousness of wrong-doing these deeds would not have been destroyed in December 1904, or in January 1905, when land fraud prosecutions were rife in Oregon. Had the pretended defense any foundation in fact, Lucy La Raut and Ethel La Raut would have advised themselves of the value of the claims taken by them and of the probable amount that might be readily realized thereon; they would have ascertained the cost to them of entering the lands, and the taxes charged against the same. Stephen and Alice La Raut would have insisted upon disposing of their equity therein in order to pay their debts, and to secure sufficient funds to extricate them from the pinching poverty which they appear to have been struggling under. If this pretended defense were true the company would not have exercised ownership and control over the lands; it would not have carried the lands into its general account as an

asset of its own; it would not have charged the items of expense incident thereto to its own general account without any segregation as to the amount incurred as to each individual entry.

If it were true that Robert Booth was merely attempting to assist his relatives, there was no necessity of paying them each \$100.00 after the entries were perfected. It could not well be that the poverty of each was identical, and in order to relieve the same that each should have exactly the same sum as was paid to Jordan, to Brumbaugh, to Roche and to Dunbar, at the same time and under like circumstances.

It will be said that the evidence shows that Dunbar and Roche got \$900.00 each instead of one hundred; \$100.00 was the sum that Roche and Dunbar each received at the time the La Rauts were paid \$100.00 each, to-wit: about July 31st, 1902. The \$800.00 that was paid to Roche and Dunbar was paid at just the time the La Raut deeds were destroyed, and when they, as bookkeepers for the Booth-Kelly Lumber Company might have been called upon to state what they knew of the land transactions of the company, and besides, so far as this record shows, these \$800.00 transactions may be mere bookkeeping entries.

If this pretended defense were true, when George Kelly took the deeds from the La Rauts in September and March 1907, he would have had an entry made in the books at that time, if one was not therein, showing that the deeds held by the company were mortgages,

and he would have had an account opened with each of the individuals. Both Booth and Kelly claim that Booth told him prior to that time the understanding he had with the La Rauts when the entries were made.

George Kelly would have had these lands taken out of the stumpage account of the company; he would have had the \$25.00 paid to each of the La Raut girls charged to them individually and not to the stumpage account, and when in 1910 George Kelly paid Stephen and Alice La Raut \$50.00 each for their alleged equities in their respective claims he would have had the same entered against their individual accounts; moreover, if this pretended defense were true, George Kelly would not have had the gall and the nerve to take from poor Stephen La Raut and Alice La Raut, for \$100.00, timber claims in which they had an alleged equity, worth at the most conservative estimate, \$10,000.00.

These people on account of their inability to make a decent and honorable living in Oregon in the employ of the Booth-Kelly Lumber Company, and the generous (?) R. A. Booth, had determined to go to Canada and renounce their allegiance to the United States in order that they might take up a homestead in the rigorous and forbidding climate of Northern Canada. People in their straits and at their time of life, do not lightly abandon \$10,000.00 and go off to a new country to make a home out of raw land; they do not in such circumstances, voluntarily present \$10,000.00 worth of property to an opulent corporation; Stephen La Raut worked in the woods and knew the value of timber just as well as Kelly

or Booth. Just think of it: R. A. Booth in the exercise of his pretended generosity for the purpose of assisting his poor relations, was willing to take, and, by his own testimony, did take from them for a timber company worth eight or ten million dollars, timber claims of the approximate value of \$14,000.00, for the paltry, insignificant sum of \$300.00. Is it likely that a man, who would do what he says he did do, would not make a prior agreement with an entryman to take a timber claim?

If this pretended defense were true and R. A. Booth was actually attempting to help his poor relations, he naturally, in the course of nine years would have given Lucy La Raut and Ethel La Raut some intimation of what their timber claims were worth and how they were being handled, especially would he have done this in the case of Ethel La Raut, whose husband has been for years employed by the Booth-Kelly Lumber Company at a modest wage.

He would have told his Board of Directors something about the alleged arrangement; George Kelly would have told them something about it; A. C. Dixon, the present Manager, would have told them something about it. They would not have left the matter to the oral traditions of the Booth and the Kelly families. A. C. Dixon would not have signed and sworn to an answer in this case alleging that the Booth-Kelly Lumber Company had purchased the land in good faith from the entrymen and that it was the owner of both the legal and the equitable title to the lands. Indeed the attorneys

for the Company would have been advised of these facts and would not have drawn such an answer.

This pretended defense is based solely upon the denial of Robert Booth under oath that he entered into fraudulent agreements with the La Rauts for the acquisition of the lands entered by them. The declarations that Booth claims to have made to George Kelly and to A. C. Dixon, are mere self-serving declarations, and neither his assertion that he made them nor that of Kelly, or Dixon, are competent evidence for any purpose. If Booth had made any such declaration or explanation George Kelly would have either paid Stephen and Alice La Raut the actual value of their timber claims, or he would have told them of people in the market to whom they could sell them and he would also have advised them of the probable value of the claims and enabled them to secure for themselves a competence to take care of them in their old age and which would permit them to continue to reside in the community where they had so long been residents and to which they were necessarily much attached. Kelly would not have permitted them to become virtual exiles in their declining years, in a foreign land, without means and without friends. An attempt on the part of Mr. Kelly to perpetrate such an outrage, under such circumstances, would have shocked Booth and brought from him an emphatic protest.

If any such declaration had been made to Dixon he would have informed his Board of Directors and would have seen to it that the Company's answer in this case

contained allegations in accordance therewith. Every other fact, and circumstance, and act in this case contradict Booth's denial. Booth is a wealthy man, takes an active interest in public affairs, is a pillar of the church, is interested in the Booth-Kelly Lumber Company, and, by reason of all of these things, had a strong incentive to make a denial.

It is submitted that the bare denial of one or more of the participants in a fraud is not sufficient to overcome a multitude of other circumstances in the case, which unerringly point to fraud and are susceptible of no other reasonable construction except the one contended for by the Government, to-wit: that the entries were made on speculation and under circumstances and agreements prohibited by law.

This is not a case where the presumption of regularity following the patents is corroborated and sustained by numerous other facts, and it is only shaken by one or two minor circumstances in the case. It is a case where the presumption is refuted by every other fact in the case; by the conduct of the parties, by the manner of controlling the property, by the attitude of the entrymen toward the lands, by the manner of keeping the accounts, and every other fact and circumstance in the case, and is supported only by the bare denial of Robert A. Booth and two of the entrywomen. The presumption mentioned does not go so far as to sustain the titles evidenced thereby in the interest of the party committing the fraud because he says there was no fraud, when every other fact and circumstance in the case, except his denial, shows

there was. Such, however, is the doctrine contended for by the defendants.

Let us assume that these entries were made as alleged in complainant's bill of complaint, what would then have been the acts of the parties? How would they have conducted themselves? They would have done just exactly what they did do in this case. The Booth-Kelly Lumber Company would have cruised the lands before the entries were made. They would have cast about to find someone who could take the lands for them. They would have selected for this purpose, persons in their employ, or related to the members of the company and who had not exercised their rights to take a timber claim. They would have asked these parties to take out timber claims, and would have promised them some compensation for their services in separating the Government from its title. They would have paid all the expenses of the persons entering the lands, the fees to the land office for filing, and all other expenses for filing. They would have attended to the securing of witnesses to be named on final proof and to the cost of advertising notices of proof; they would have informed the entrymen of the date of proof and the time it was necessary to go to the land office for that purpose, and at that time would have had the witnesses present to give the necessary testimony, and would have provided there at that time the necessary funds to pay for the lands. In the meantime, the entrymen would have paid no attention to the matter whatever, except to discuss about the family board the compensation they expected

to receive for their services in making the entries, but would have waited idly by until told to move by the Booth-Kelly Lumber Company.

The initial costs and expenses would have been charged into books of the company against the general expenses of the company relating to timber lands, just as they were in this case, and not against the individual entrymen. When the proofs had been perfected, the entrymen would each have executed and delivered a deed to the company covering the land entered by him or her, and also would have received the compensation agreed upon for making their respective entries. These deeds would not have been put upon the record, but the fact of their existence would have been concealed, just as they were in this case. The lands embraced within the claims, however, would have been carried into the general stumpage account of the company and considered as an asset of the company and they would have paid taxes upon the lands from that time on, just as they did in this case. No accounts would have been opened with the individual entrymen except to dispose of the item of \$100.00 paid to them for services, and such accounts would have been immediately closed due to the fact that the services, and the transactions, and the agreements had been completed and closed. A few years later, when prosecutions for fraudulent land transactions were prevalent, the deeds delivered by the entrymen, who were related to members of the company, and not recorded, would have been destroyed, as they were in this case, for the purpose of preventing the Govern-

ment of the United States from definitely ascertaining that it had been defrauded. Later, when the land fraud agitation had died out, new deeds would have been taken from the entrymen. And, in view of the fact that the company had got and was getting several thousand dollars worth of property for practically nothing, \$25.00 additional would have been paid to each of the unmarried women entrants. The \$25.00 paid to the La Raut girls would have been charged against the general stumpage account of the company and not against the individuals. At that time it would have been deemed safe to place all the deeds on record, including that of Edward Jordan. Later, when the Government was making a further investigation preparatory to bringing this suit, and Land Agents were industriously inquiring in and about Eugene and other places where these people lived, an additional \$50.00 each would have been given to Stephen and Alice La Raut, but no deed would have been taken, for no thought would occur to the members of the company that Alice or Stephen La Raut had any interest whatever in the lands taken by them several years previously. The entrymen, in the meantime, would have made no inquiry as to the amount of costs or expenses advanced by the company to perfect the title to the lands. They would not have inquired as to the value of the lands; they would not have any concern as to the payment of taxes thereon, and would have been entirely indifferent and absolutely ignorant of the fact that anybody had paid any taxes thereon. They would never have made any attempt to sell the lands to anybody nor to ascertain their value and would not have

remembered whether they made two deeds or one to the land. Notwithstanding they were pinched by poverty, they would have had no interest in the fact that the land taken by them was worth anywhere from \$2,500.00 to \$10,000.00. In fact, under such circumstances, it would have done them no good to have taken any interest in these matters, for they had parted with all of their interests on July 31, 1912, when they made the first deeds. A. C. Dixon would have told his attorneys when this case was started, that the company owned the lands and that it had purchased them from the entrymen, and later, when they came to realize that every fact and circumstance in the case showed that this was not so, they would resort to the claim that the deeds given to them by the entrymen originally were in fact mortgages and they would have had their answer amended accordingly. Lucy and Alice La Raut and the Board of Directors and the officers of the company would have made an attempt to sustain such claims.

The pretended defense is a mere afterthought, as shown by everything in the record; every fact and circumstance entitled to serious consideration convincingly points to the fact that the claims were fraudulent as alleged.

The requirement that fraud in these cases be established by clear and convincing proof before a patent will be set aside does not place upon the Government the burden of establishing such fraud to a mathematical certainty. What is required is that the fraud must be shown to a reasonable certainty. In reaching its con-

clusions the court will give acts and circumstances their reasonable and ordinary significance. If the weight and preponderance of the evidence in the case clearly indicates the existence of the fraud charged, the patents will be set aside.

It is to be expected that the interested parties will make denials. Something more, however, than mere denials is required, when facts and circumstances appear in the case pointing to fraud; the parties interested, and who know of the transaction, must make explanations which establish the innocent character of such acts and circumstances. Such explanations were not and could not be made in this case. The writer of this brief would not have deemed it necessary to present at such length an argument upon the facts in this case, but for the fact that the court below was so deeply impressed by the statements of the defendants.

The Court below, however, did not hear the witnesses testify and had no better opportunity to determine the weight of the evidence than this Court. Perhaps if he had been permitted to hear the witnesses testify and had an opportunity to observe their manner on the stand when they were making the absurd statements and explanations contained in the record, he would not have given so much weight to their testimony. A case can hardly be conceived where the acts of the parties and the circumstances and conditions surrounding them point so conclusively to fraud as they do in this case; where the reasonable and ordinary significance given to such acts and circumstances irresistibly call for the conclusion that

the fraud charged was perpetrated; where the conduct of the parties interested and their declarations upon the stand were so violently opposed by every fact and circumstance in the case.

It is submitted that the fraud charged by the Government is fully and clearly established and that the patents involved herein should be cancelled and the decree of the Court below reversed.

Respectfully submitted,

JOHN McCOURT,

United States Attorney for Oregon.

STATE OF OREGON,  
County of Multnomah.

} ss.

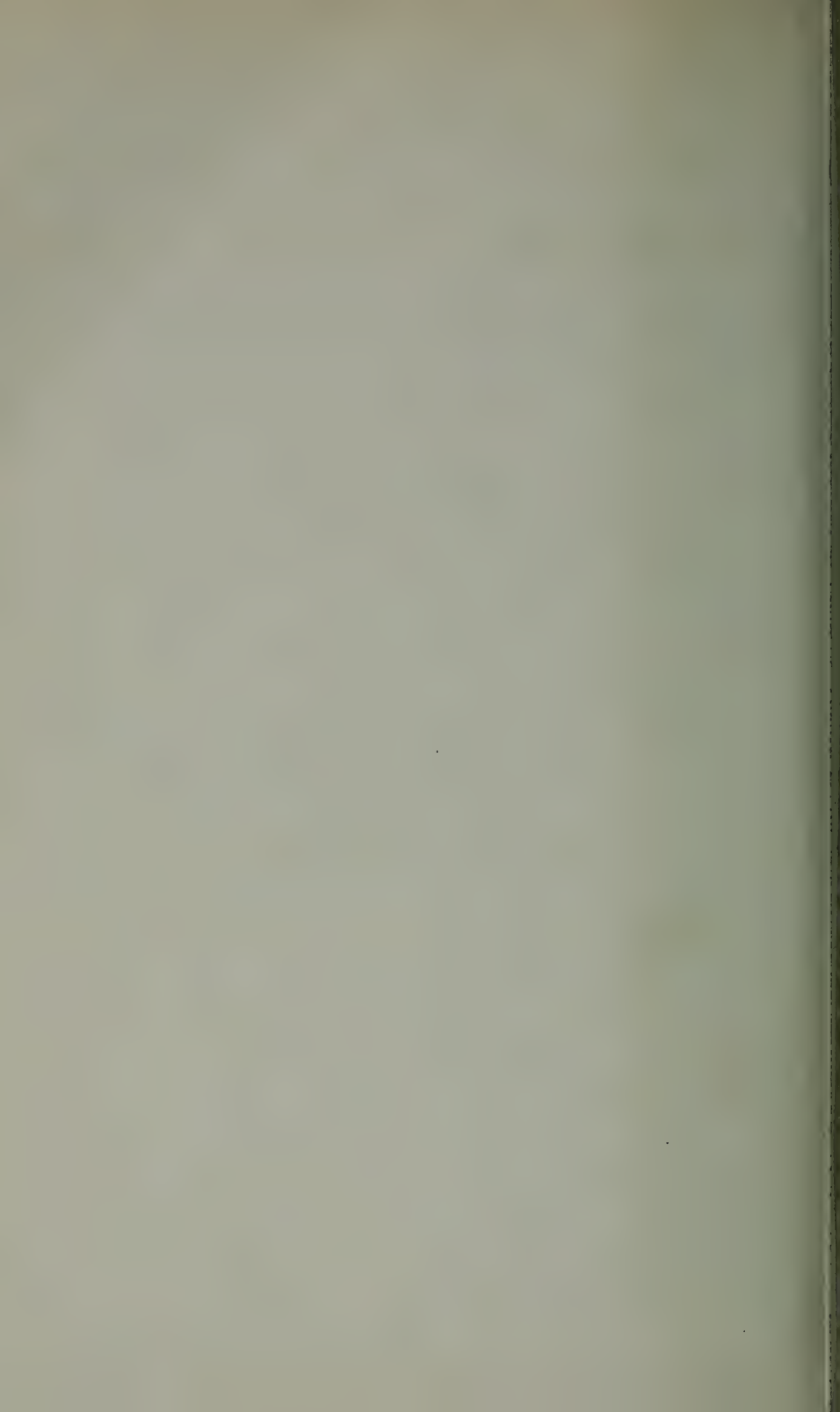
Due and legal service of the foregoing brief is hereby accepted and the receipt of a true copy thereof is hereby acknowledged.

Attorneys for Plaintiff in Error.

STATE OF OREGON,  
County of Multnomah.

} ss.

I, John McCourt, hereby certify that I am United States Attorney for the District of Oregon; that I prepared the foregoing copy of brief and have carefully compared the same with the original thereof and it is a true and correct transcript of the said original and the whole thereof.



No. 2175

# United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT.

UNITED STATES of AMERICA,  
*Plaintiff and Appellant,*  
vs.

BOOTH-KELLY LUMBER CO., a corporation  
STEPHEN A. LA RAUT, ALICE LA RAUT,  
ETHEL M. LA RAUT and LUCY LA RAUT,  
*Defendants and Appellees,*

and

BOOTH-KELLY LUMBER CO., a corporation  
*Defendant and Appellant,*  
vs.

UNITED STATES of AMERICA,  
*Plaintiff and Appellee.*

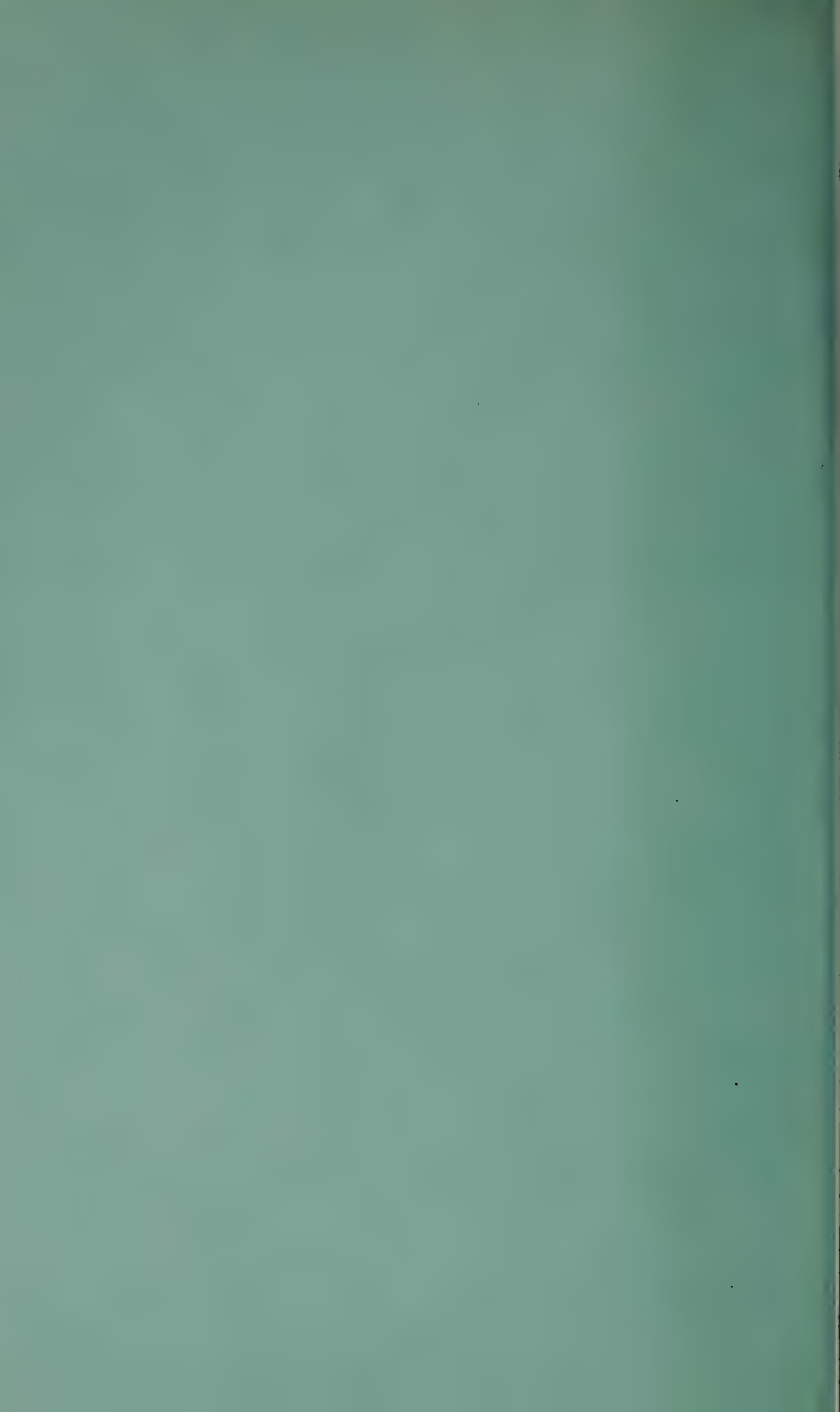
## Brief for Appellees and Booth-Kelly Lumber Co., Appellant

Appeal and Cross Appeal from the United States  
District Court, District of Oregon

A. C. WOODCOCK and ALBETT H. TANNER,  
Solicitors and Counsel for Appellees and  
Booth-Kelly Lumber Co., Appellant

PACIFIC BANKER  
**FILED**

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# United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT.

UNITED STATES of AMERICA,  
*Plaintiff and Appellant,*  
vs.  
BOOTH-KELLY LUMBER CO., a corporation  
STEPHEN A. LA RAUT, ALICE LA RAUT,  
ETHEL M. LA RAUT and LUCY LA RAUT,  
*Defendants and Appellees,*  
and  
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vs.  
UNITED STATES of AMERICA,  
*Plaintiff and Appellee.*

## Brief for Appellees and Booth-Kelly Lumber Co., Appellant

Appeal and Cross Appeal from the United States  
District Court, District of Oregon

### STATEMENT.

This is a suit in equity to set aside five patents issued by the United States, as follows:

One to Edward Jordan, dated August 3, 1904, for Lots 7, 8, 9 and 10 of Section 2, Tp. 22 S. of R. 2 West, W. M.

One to Stephen A. La Raut, dated August 3, 1904, for the N. E.  $\frac{1}{4}$  of Section 26, same township and range.

One to Alice La Raut, dated August 3, 1904, for the S. E.  $\frac{1}{4}$  of Section 26, Tp. 21 S. of R. 3 West, W. M.

One to Ethel M. La Raut, dated August 3, 1904, for Lots 9, 10, 15 and 16 of Section 28, Tp. 21 S. of R. 3, West, W. M.

One to Lucy La Raut, dated August 3, 1904, for Lots 1, 2 7 and 8 of Section 28, Tp. 21 S. of R. 2 West, W. M.

Said lands are all situated in a section of the country commonly known as "Brumbaugh Creek," in Lane County, Oregon, and were deeded to the Booth-Kelly Lumber Company.

Paragraph I of the bill of complaint sets out that the "Booth-Kelly Company" during all the times mentioned in the bill was and is a corporation, which is admitted by the answer, except it alleges that the true name is the "Booth-Kelly Lumber Company."

(Record, 4-19.)

Paragraphs II and III of the bill allege that in February, 1902, the entrymen and entry women filed with the register and receiver of the U. S. Land Office at Roseburg, Oregon, their timber and stone sworn statements, making application to purchase the land, and that in May, 1902, they each made the proof required by law and paid the purchase price of the land, to-wit, \$400, and obtained

the final certificates entitling them to patents for the land purchased, and that on August 3, 1904, patents were issued to the purchasers.

(Record, 5-10.)

The answer admits these allegations of the bill to be true.

(Record, 19.)

Paragraphs IV and V of the bill allege that the entries were made at the solicitation and by the procurement of the defendant, the Booth-Kelly Lumber Company, acting by and through its officers, agents and hirelings, who fraudulently and corruptly conspired together to procure and hire each of said entrymen for some small sum of money to make the entry and thereupon convey the land to the Booth-Kelly Lumber Company, and that each of said entrymen was in fact procured and hired to make his entry and purchase by some one or more of said conspirators pursuant to said conspiracy, and in making the same said entrymen acted therein not for his own use and benefit, but with the intent and pursuant to an understanding then existing between him and the said person or persons so procuring his entry that the land when so entered and purchased should be conveyed by him to the Booth-Kelly Lumber Company; that the expense of making the entries, including the payment of said purchase money and all other expenses and disbursements, were borne by the Booth-

Kelly Lumber Company, and that the affidavits and proofs were false and fraudulent and untrue.

(Record, 10-13.)

The answer denies specifically all the allegations of said paragraphs IV and V of the bill.

(Record, 20-23.)

Paragraph VI alleges that after May 7, 1902, the exact date being unknown to plaintiff, the said Edward Jordan deeded the land entered by him to the Booth-Kelly Lumber Company; that on May 7, 1907, Stephen A. La Raut and Alice La Raut deeded the land entered by them to the same company; that on September 6, 1907, said Ethel M. La Raut and Lucy La Raut deeded the land entered by them to the same company, and that the Booth-Kelly Lumber Company by virtue of said deeds and patents now falsely and fraudulently claims to be vested with the full ownership in equity, as well as at law, in and to said lands.

(Record, 13-15.)

The answer denies the allegations of paragraph VI except that defendants admit that deeds were made by the entrymen to the Booth-Kelly Lumber Company, and in the original answer it was admitted that it claimed by virtue of said deeds to be the legal and equitable owner of said land, but the answer was amended by stipulation so as to allege and show that the Booth-Kelly Lumber Company is the holder of the legal title to the lands entered by and patented to Ethel M. La Raut and

Lucy La Raut, but denying that it is the equitable owner of said land, alleging affirmatively that said Ethel M. La Raut and Lucy La Raut ever since said patents were issued to them have been and now are the equitable owners of said land, and that the deeds made by them to the Booth-Kelly Lumber Company were intended to be and were in fact mortgages to secure the payment of certain advances made and to be made to them by said company to enable them to enter and pay for said land and for other purposes, and striking out the plea of bona fide purchase by the defendant, the Booth-Kelly Lumber Company, as to the said lands entered by Ethel M. La Raut and Lucy La Raut.

(Record, 33.)

The La Raut patents are based upon a different state of facts than the Jordan patent. The La Raut entries were made with the assistance of Robert A. Booth, the then manager of the company, while the Jordan entry and the entries of H. A. Dunbar, Thomas Roche and D. H. Brumbaugh, not involved in this suit, although in the same group of claims, were made with the assistance of John F. Kelly, the land agent of the company.

### **The La Raut Patents.**

The facts as to the La Raut patents are substantially these: Stephen A. La Raut and Alice La Raut, his wife, and Ethel M. La Raut and Lucy La Raut were and are brothers-in-law and sisters-in-law to Robert A. Booth, then the general manager

of the Booth-Kelly Lumber Company. They were all poor and dependent more or less on Robert, and he assisted them in many ways. Stephen A. La Raut and Ethel M. La Raut were at the time the entries were made in the employ of the company, and Lucy was living at home with her parents. Ethel M. La Raut had asked Robert to assist her in getting a timber claim, and he had promised to do so when an opportunity arose so that he could. When this group of entries were about to be made Mr. Booth told Ethel that he could locate her on a claim and would advance her the money to do so, which she could pay back to him when the claim was sold, which was agreed to between them. He also stated to her that the company owned other land adjacent to these lands, and that when the company sold theirs she could include hers in the sale, or if the company logged it off and could use the timber they would pay her the stumpage for the timber. Subsequently the same arrangement was made by Ethel with Mr. Booth for Stephen A. and Alice, his wife, and Lucy. Mr. Booth gave instructions that they should be shown the claims, and instructed H. A. Dunbar, who was then book-keeper for the company, to furnish them the money and assist them in doing whatever was necessary to comply with the law. In due time they went on the land and subsequently went to Roseburg and made their initial filings, and were furnished the money necessary to pay the fees and charges by Mr. Dunbar, and subsequently they proved up

on their claims and were furnished the money by Mr. Dunbar and paid the government price for the land, and final certificates were issued to them. In due course of business the patents were issued. Mr. Booth's instructions to Mr. Dunbar, or at least his intention at the time, was to have the money needed for entering and paying for the land taken from his individual funds and charged to them, but it appears that Mr. Dunbar used company funds for the purpose and charged the same to the several parties. However, Mr. Booth was to be personally responsible to the company for the money.

After these parties had proved up on their claims they made deeds to Mr. Booth, to be held by him as security for the advances made. These deeds were not recorded, but were held by Mr. Booth until some time in the early part of 1907. At that time Mr. Booth retired as manager of the company and was succeeded by George H. Kelly, and it was arranged at that time to take up the deeds running to Mr. Booth and substitute for them deeds running to the company, which later deeds were duly recorded. Stephen A. La Raut in the spring of 1910 took a notion to go to Canada and went to Mr. Booth about selling his claim, who advised him not to sell, but to hold on to their claims and they would be worth a great deal more than they were then. He also informed him that he was no longer manager of the company, but that he would have to go to George H. Kelly, the then manager, if he insisted on selling. He went to George

H. Kelly and offered to take \$100, in addition to the advances made by the company, for his and his wife's claims, which offer was accepted and a settlement was made with them by which they were paid an additional hundred dollars for their claims and receipts taken from them. These receipts were exhibited to the government counsel pursuant to his request, and he stated that he did not care for them, and are made a part of the record by stipulation filed in this cause. A copy of one of the receipts is as follows:

“Eugene, Or., Feby 3d, 1910.

Received of the Booth-Kelly Lumber Co. fifty dollars in full payment for all balance due me on account of the S. E.  $\frac{1}{4}$  Sec. 26, Tp. 21 S. R. 3 W. \$50.00. (Sgd.) Alice La Raut.”

The other receipt is the same except the description of the land, and signed by Stephen A. La Raut. No settlement has ever been had with Ethel M. La Raut and Lucy La Raut, and they both claim to be the owners of the property, and that the deeds they made to the company are simply mortgages.

### **The Jordan Patent.**

The facts as to the Jordan patent, as claimed by appellant Booth-Kelly Lumber Company, are substantially these: Jordan was an employee of the company at its sawmill at Coburg, and had been for many years. He had frequently asked John F. Kelly to locate him on a timber claim. Kelly noti-

fied him that he had a claim for him. He went to Eugene and arranged with Kelly to advance the money, and agreed to repay him when he sold the land. He was then shown the land and went to Roseburg and made the initial filing, and subsequently proved up, and a final certificate was issued to him. He was having trouble with his wife, who was about to sue him for a divorce, and was anxious to sell his claim, and finally Kelly bought it of him, paying him \$100 in addition to the amounts advanced, and he deeded it to the company. This deed was made after the final certificate was issued, but before patent. Claims were taken in the same way and in this same group of claims by H. A. Dunbar, Thomas Roche and D. H. Brumbaugh, also employees of the company, and the fees and purchase price advanced by the company in the same way, but for some reason they were not made parties to this suit, and the patents issued to them have not been attacked in any way by the Government.

The court below entered a decree setting aside the Jordan patent and dismissing the bill of complaint as to the La Raut patents.

The Government has appealed from that part of the decree dismissing the bill as to the La Raut patents, and the Booth-Kelly Lumber Company has appealed from that part of the decree setting aside the Jordan patent.

(Record, 489-502.)

A stipulation was filed that the case should be tried in this court on the one transcript of the printed record.

(Record, 1-2.)

### POINTS AND AUTHORITIES.

There is nothing in the Timber and Stone Act to prevent the entrymen from borrowing the money to pay the expenses of making the entries and to pay the Government price for the land.

U. S. v. Detroit Timber Co., 124 Fed. 393.

Lewis v. Shaw, 70 Fed. 289-294.

Hoover v. Salling, 110 Fed. 43-47.

U. S. v. Richards, 149 Fed. 443.

U. S. v. Barber Lumber Co., 172 Fed. 948-960.

U. S. v. Williamson, 207 U. S. 425.

U. S. v. Biggs, 211 U. S. 507; 32 L. D. 349;  
34 L. D. 129.

Larson v. Weisbecker, 1 L. D. 422.

Appeal of Ray, 6 L. D. 340.

Halling v. Eddy, 9 L. D. 337.

Church v. Adams, 37 Ore. 355.

Wilcox v. John, 21 Cal. 367.

Norris v. Heald, 12 Mont. 282.

James v. Tainter, 15 Minn. 512.

Gross v. Hofeman, 91 Minn. 4.

Fuller v. Hunt, 48 Iowa 163.

It is now settled beyond controversy that upon making his initial filing on a timber claim the entryman may sell or agree to sell the claim, or borrow money on it, or do as he pleases with it without violating any of the provisions of the Timber and Stone act.

U. S. v. Williamson, *supra*.

U. S. v. Barber Lumber Co., 172 Fed. 948-960.

U. S. v. Kellerbach, 175 Fed. 463-466.

A deed, though absolute in form, if intended as security is a mortgage, and it may be shown to be such by parol evidence.

Peugh v. Davis, 96 U. S. 332.

Brick v. Brick, 98 U. S. 514.

Cabrera v. Bank, 214 U. S. 224-230.

Russell v. Southard, 12 How. (U. S.) 139.

Hall v. O'Connell, 52 Ore. 164.

Kramer v. Wilson, 49 Ore. 164.

When the Government calls the entryman as a witness on its behalf it is bound by his testimony unless overcome by contravailing evidence.

U. S. v. Barber Lumber Co., 172 Fed. 948-960.

Choctaw, Etc., Ry. Co. v. Newton, 140 Fed. 225-250.

U. S. v. Budd, 144 U. S. 172.

As to the character of evidence required by a court of equity to set aside a patent we call attention to the following decisions:

U. S. v. Budd, 144 U. S. 154-162.

Maxwell Land Grant case, 121 U. S. 321-325.

Colorado Coal Co. v. U. S., 123 U. S. 307, 317.

U. S. v. Marshall Mining Co., 129 U. S. 579, 589.

U. S. v. Stinson, 197 U. S. 200-204.

U. S. v. Clarke, 200 U. S. 601-608.

The declarations of a person after he has parted with the title to real estate are not admissible against his grantee to defeat or destroy the title.

Dodge v. Freedman's Bank, 93 U. S. 379-383.

Phillips v. Laughlin, 99 Me. 26.

Vrooman v. King, 36 N. Y. 477.

### **SPECIFICATION OF ERROR.**

The court below erred in setting aside and cancelling the patent issued to Edward Jordan and in not dismissing the bill as to said patent.

## ARGUMENT.

There is nothing in the Timber and Stone Act to prohibit one about to enter land under that act from making arrangements to borrow the money to pay the expenses, and to pay for the land and give a mortgage on the land for that purpose after the entry is made.

In *U. S. v. Detroit Timber Co.*, 124 Fed. 393, the facts as stated in the opinion of the district judge at page 397 were as follows:

“Copeland had at that time talked to some men whom he knew personally and favorably, and who had expressed a desire to take up land under that act if they could get the money, and he so advised Martin. Martin then told him they would loan that class of men the money if they would take up the land. Copeland then inquired what security he would demand, and he said simply their note with eight per cent interest. Copeland then hunted up the men that he had talked to and others also, and others hunted him up to inquire about the entry of these lands, and he explained to them the law, and told them they could get the money to enter the land from the Martin-Alexander Lumber Company without security, and that the Martin-Alexander Lumber Company would trust to their honor to pay it. He took them and showed them the lands, made them a probable estimate of the timber in the respective tracts, and told them that the timber on the land at fifty cents a thousand feet

(which was the market price at that time) would pay more than the land would cost, and told them they could sell the land or the timber after the patents were issued. All the co-defendants of the Martin-Alexander Lumber Company, nearly all of whom were employees, or had been, of the company, entered the land under the conditions just above stated. The money was furnished by the Martin-Alexander Lumber Company. Copeland usually went with the parties to examine the land, accompanied them to the land office and furnished them the money, and they entered the land, made the necessary proofs in conformity with law, and their expenses to the land office and back were paid by the Martin-Alexander Lumber Company and charged to them upon the books of the company. Either just before the lands were entered and the receipts for the purchase money were obtained, or just afterwards, the money having been furnished to the entrymen by the Martin-Alexander Lumber Company, they would execute their notes to the company for the amount with interest, and in nearly all instances shortly afterwards they sold the timber standing on the land to the Martin-Alexander Lumber Company by a written contract and the notes were cancelled. By the terms of the contract the Martin-Alexander Lumber Company was to pay fifty cents a thousand stumpage for all the timber cut from the land, and the amount which had been loaned by it to enter the land was treated as purchase money advanced on the timber, and if

the value of the timber exceeded the value of the money advanced, with interest, the seller was to get the difference."

These facts, with others of a more or less suspicious character, were held to be insufficient to show that the entries were fraudulent.

The judgment in this case was affirmed in the Circuit Court of Appeals and in the Supreme Court of the United States on the ground that the Detroit Timber Company was a bona fide purchaser, and the question as to whether the entries were fraudulent was not directly passed upon by those courts, while the district judge dismissed the bill on the ground that the entries were not fraudulent.

We cite the case here to show that the fact that the Booth-Kelly Lumber Company advanced the money to pay the expenses of the entries and to pay for the land did not render the entries illegal or fraudulent.

In *Lewis v. Shaw*, 70 Fed. 289-294, where a similar question arose, it was disposed of by Judge Hanford as follows:

"It is claimed that Miller did not purchase the land in good faith for his own use, but acted merely as the instrument of Ryan, and that it was agreed between them that the title which Miller should acquire should inure to the benefit of Ryan. It was on this ground that the Secretary of the Interior cancelled the entry. The facts relied upon to sustain the secretary's conclusion are that Miller was an employee of Ryan and obtained his first

information with reference to the land from Ryan; that before deciding to enter it as timber land he consulted with Ryan and obtained from him a promise to advance the amount of money necessary to make the entry, and that Ryan agreed to take as security for the amount of the purchase price which he should advance a conveyance of a one-half interest in the land; that Ryan did advance money to Miller at the time his final proof was made; that a few days afterwards Miller executed a contract to convey a one-half interest in the land as security for the money advanced and an additional sum which Miller owed on account of other dealings, in all amounting to about \$475. Ryan then commenced cutting timber on the land, and actually removed most of the merchantable timber, and he subsequently purchased Miller's remaining one-half interest for the price of \$1000.

\* \* \* The facts are not necessarily inconsistent with an honest entry by Miller, and certainly not sufficient to compel an inference of fraud sufficiently strong to overcome the only positive testimony bearing upon this vital point. To justify a forfeiture, proof of the facts constituting fraud or perjury must be clear and convincing. Mere inferences are not sufficient."

In *Hoover v. Salling*, 110 Fed. 43, 47, the Court of Appeals for the Seventh Circuit held that a married woman making an entry of a timber claim might borrow the money from her husband with which to pay for the land, and held that a ruling of

the Interior Department to the contrary was erroneous.

In *United States v. Richards*, 149 Fed. 443, which was a criminal prosecution for a conspiracy to defraud the Government out of certain of its lands, the court, Munger judge, gave the jury the following instructions, page 456:

“The jury is instructed that the defendants, or any of them, had a perfect right to advance money to entrymen to pay filing fees, and to agree that in the event the entryman desired to sell after he had proved up and the defendant then desired to buy, such advances should be credited on the sale, or if no such arrangement was thereafter made the money would be refunded, and that such an agreement would not, in and by itself, be a violation of any law of the United States. But such fact may be considered in connection with the other evidence in determining the existence of the alleged conspiracy or corrupt agreement.”

In the case of the *United States v. Barber Lumber Company*, 172 Fed. 948-960, the court says after quoting from the *Budd* case: “Indeed, under later decisions an applicant for the purchase of timber lands has a right after he has made his initial application, and before final proof, to contract to sell the title thereafter to be acquired, and the intending purchaser may lawfully advance to him the money with which to make final proof in order that he may comply with his contract,” citing *U. S. v.*

Williamson, 207 U. S. 425; U. S. v. Biggs, 211 U. S. 507.

The Secretary of the Interior has several times held that such fact would not render the entries fraudulent or affect their validity.

32 L. D. 349.

34 L. D. 129.

The pre-emption law contained a clause identical with the one in the Timber and Stone Act. It required the pre-emptor to make oath "that he has not settled upon and improved such land to sell the same on speculation, but in good faith, to appropriate it to his own exclusive use; and that he has not, directly or indirectly, made any agreement or contract, in any way or manner, with any person whatsoever, by which the title which he might acquire from the Government of the United States should inure, in whole or in part, to the benefit of any person except himself." Revised Statutes, Sec. 2262. While it was at one time held by the Interior Department that this statute prohibited the making of a mortgage on the land to obtain money to pay for it, the later decisions are the other way.

In *Larson v. Weisbecker*, 1 L. D. 409, it was said by Secretary Teller: "I am aware that the former rulings of your office and of this department, following the precedent of an early decision, have held that an outstanding mortgage given by a pre-emptor upon the lands embraced in his filing

defeats his right of entry upon the ground that such mortgage is a contract or agreement by which the title to the lands might inure to some other person than himself. A careful consideration of this section leads me to a different conclusion, and to the opinion that, unless it shall appear under the rules of law applicable to the construction of contracts or otherwise that the title shall inure to another person, it does not debar the right of entry; and that the mere possibility that the title may so result as in the case of an ordinary mortgage is not sufficient to forfeit the claim. \* \* \* The statute under consideration requires from a pre-emptor, in my opinion, in order to the defeat of his right of entry, a contract by force of which title to the land must vest in some other person than himself; and it must appear that such was his intention at the time of making it. If, on the contrary, the mortgage was a mere security for money loaned, and the contract does not necessarily divert the title from him, it was not a contract or agreement within the meaning of Section 2262."

This decision was rendered April 24, 1882, and was followed October 11, 1887, in Appeal of Ray, 6 L. D. 340, wherein it is said "there is no law or ruling of this department now in force that prohibits a pre-emptor, who has complied with the requirements of the pre-emption law in good faith, from mortgaging his claim to procure money to prove up and pay for the land."

To the same effect is *Haling v. Eddy*, 9 L. D. 337, decided September 7, 1889.

This ruling has never been departed from by the Interior Department.

Many of the state courts have held the same way on the subject, as a reference to the cases cited in this brief will show.

It is therefore perfectly clear that a person about to enter a timber claim may arrange with a third person to advance him the money with which to pay the expenses and to pay for the land, and after filing upon the land give a mortgage to secure the payment of such advances without violating any of the provisions of the Timber and Stone Act.

Hence the fact that the Booth-Kelly Lumber Company advanced to the entrymen and entry women money with which to take and pay for the land, and after the entries were made took mortgages to secure the payments so made is not sufficient to justify the setting aside of the patents if the entries were otherwise made in good faith.

Before entering upon a discussion of the evidence as to the bona fides of the entries we call the attention of the court to the character of proof required to justify the court in setting aside a patent. The Supreme Court of the United States has many times announced the rule on this subject, and it is no longer a matter of controversy, but we call attention to it here because we are firmly convinced that the Government failed to

make out a case as to any of the patents, by the clear and convincing evidence required, by these decisions.

In the Maxwell Land Grant case, 121 U. S. 325-381, the court said:

“We take the general doctrine to be that when in a court of equity it is proposed to set aside, to annul or to correct a written instrument for fraud or mistake in the execution of the instrument itself, the testimony on which this is done must be clear, unequivocal and convincing, and that it can not be done upon a bare preponderance of evidence which leaves the issue in doubt. If the proposition, as thus laid down in the cases cited, is sound in regard to the ordinary contracts of private individuals, how much more should it be observed where the attempt is to annul the grants, the patents and other solemn evidences of title emanating from the Government of the United States under its official seal. In this class of cases the respect due to a patent, the presumptions that all the preceding steps required by the law had been observed before its issue, the immense importance and necessity of the stability of titles dependent upon these official instruments demand that the effort to set them aside, to annul them or to correct mistakes in them should only be successful when the allegations on which this is attempted are clearly stated and fully sustained by proof. It is not to be admitted that the titles by which so much property in this country and so many rights are held,

purporting to emanate from the authoritative action of the officers of the Government and, as in this case, under the seal and signature of the President of the United States himself, shall be dependent upon the hazard of successful resistance to the whims and caprices of every person who chooses to attack them in a court of justice; but it should be well understood that only that class of evidence which commands respect, and that amount of it which produces conviction shall make such an attempt successful."

In *Colorado Coal Co. v. United States*, 123 U. S. 307, after quoting from the *Maxwell Land Grant* case the court says at page 317:

"It thus appears that the title of the defendants rests upon the strongest presumptions of fact which, although they may be rebutted, nevertheless can be overthrown only by full proofs to the contrary, clear, convincing and unambiguous. The burden of producing these proofs and establishing the conclusion to which they are directed rests upon the Government."

In *United States v. Marshall Silver Mining Company*, 129 U. S. 579-589, the court, after reaffirming the earlier cases on the subject, says:

"The dignity and character of a patent from the United States is such that the holder of it can not be called upon to prove that everything has been done that is usual in the proceedings had in the land department before its issue, nor can he be called upon to explain every irregularity or even

impropriety in the process by which the patent is procured.”

In *United States v. Stimson*, 197 U. S. 200-205, which was a suit to set aside a patent on the ground of fraud in procuring it, the court says at page 205:

“It should be well understood that only that class of evidence which commands respect and that amount of it which produces conviction shall make such an attempt successful.”

In *United States v. Budd*, 144 U. S. 154-162, where a case similar to the one at bar was under consideration, the court says at page 162:

“This case is even stronger in its aspects than some that have been before us, for if the particular wrong charged upon the defendants be established the money paid is by the second section of the act forfeited, and there is not even the possibility suggested in the case of *United States v. Trinidad Coal Co.*, 137 U. S. 160, of an equitable claim upon the Government for its subsequent repayment. The hardship of such a result, so different from that which is always enforced in suits between individuals, makes it imperative that no decree should pass against the defendants unless the wrong be clearly and fully established.”

### **The Jordan Patent.**

We will now ask the attention of the court to the evidence relating to the Edward Jordan patent with a view of determining whether the Govern-

ment has made out its case with that degree of certainty required in this class of cases, as shown by the foregoing decisions of the Supreme Court of the United States and numerous other decisions of that and other courts.

The figures in parentheses refer to the pages of the printed record.

The Government introduced in evidence the land office records, being the original declaratory statement, final proof, notices, etc., as to the claim of Edward Jordan (pp. 44-63).

We find from an examination of this record that Jordan in his declaratory statement made oath among other things as follows:

“That I do not apply to purchase the land above described on speculation, but in good faith to appropriate it to my own exclusive use and benefit, and that I have not directly or indirectly made any agreement or contract, or in any way or manner with any person or persons whomsoever by which the title I may acquire from the Government of the United States may inure, in whole or in part, to the benefit of any person except myself, and that my postoffice address is Coburg, Ore.” (Pp. 48-49.)

In proving up on his claim, after notice, he made the same statements under oath, and in answer to the questions propounded to him by the register of the land office on the 7th day of May, 1902 (p. 60).

On December 20, 1910, nearly eight years after his entry, he was called as a witness in this case and testified to facts which, if true, show that he

deliberately perjured himself in his declaratory statement, and in his final proof (pp. 242-250), or in his testimony given in this case. We claim he told the truth in his declaratory statement, and in his final proof, and that his effort at this late day to destroy the title which he acquired from the Government and sold to the Booth-Kelly Lumber Company, is due to a pique on his part because he did not receive as much for his claim as Dunbar and Roche did for theirs (pp. 341-379). He forgets that Dunbar and Roche held on to their claims until a more appropriate time to sell, while he insisted on selling at once on account of expected litigation with his wife, who was about to sue him for a divorce (pp. 395-399). Dunbar and Roche sold to the company in November, 1904 (pp. 340-379), while Jordan's claim was deeded to the company in July, 1902 (p. 234).

We contend that Jordan's testimony is unreliable not only because of his admission that he deliberately perjured himself before the officials of the local land office in his declaratory statement, and in his final proof, but because his testimony given in this case is on its face uncertain, improbable and contradictory. This will be shown by a careful analysis of his testimony, which we now propose to make.

He says in his direct examination that Kelly called him up by telephone and asked him if he wanted to take up a timber claim **for him** (p. 243). On cross-examination he says Kelly asked him if he wanted to take a timber claim (p. 255). He says

Kelly told him he would give him \$100 for taking up the claim (p. 244) when he went to Eugene, and that the conversation took place in Kelly's office (p. 269), but on cross-examination, when he is called upon to detail all the conversation between them there at that time he says nothing about the \$100 being mentioned (p. 258), and said he did not remember all the conversation (p. 258). He swears positively that the land was paid for by a check on the Eugene Loan and Savings Bank (pp. 260-261). Yet the statement of J. H. Booth, receiver of the land office, introduced by the Government, shows that it was a draft and not a check (p. 137). He says he saw Kelly the next day when he came back from filing on the land, but did not talk to him (p. 263). In the next breath he says he did not remember whether he talked to him or not the next day; thinks not (p. 263). Then when asked if he did not see him and tell him he had been up and filed on the claim, he says, "Certainly" (p. 263). After saying in one breath that he might have seen Kelly the next day and talked with him, he swears he did not say that (pp. 263-264). Although he had been a timber man and engaged in the lumber business, he pretends that he did not know such an arrangement as he testifies to was illegal (p. 271).

After giving page after page of contradictory and inconsistent answers in his testimony, he was asked if Kelly said anything to him about agreeing or making any contract with him to sell the

land before he filed on his claim, and he made the following answers:

“A. He called me up and wanted me to take up a claim.

Q. That was all there was to it?

A. There was lots more, but I do not remember what; it has been a good many years ago” (p. 272).

He admits in another place that his memory is bad as to time and dates (p. 257).

It does not appear when Jordan turned patriot and disclosed this transaction as he now claims it to the Government agents. It does appear from his own evidence that he had not done so up to 1905, for when T. B. Newhausen, a special agent of the Government, and then actively engaged in land fraud investigations in Oregon, interviewed him at Clatskanie, and requested him for information about his claim, he refused to talk (p. 254). He was in Portland when the Federal grand jury was in session in 1905 investigating land frauds, but he made no disclosures to that body or to any of its officers or agents of the crooked piece of business he had been engaged in on behalf of the Booth-Kelly Lumber Company (p. 252).

He was asked on cross-examination, if when he was interviewed by T. B. Newhausen at Clatskanie he did not tell him that whatever arrangement he had with Kelly about selling him the claim, was made after he had filed on the land, and made answers as follows:

“A. That I do not remember.

Q. Are you sure about that?

A. It is a long time ago, and a fellow forgets those things, you know" (p. 254).

He knew that Newhausen might be called to impeach him as to such statement, and so he says he did not remember.

Indeed, there is only one fact he seems to have thoroughly in mind, and that is that the arrangement with Kelly about paying him the \$100 was made before he filed on his claim. He seems to have been made to understand that that much he must be certain of in order to defeat the patent. As to all else there is uncertainty, obscurity and memory fails him.

Besides the inherent weakness of Jordan's testimony, he is flatly contradicted and impeached by Thomas Roche. Jordan testifies that he mentioned to Roche on their way to Roseburg that they were throwing their rights away, but that they might as well get the hundred dollars as lose it entirely, and that Mr. Roche nodded his head to what he said (p. 274). Mr. Roche says no such conversation ever occurred (pp. 379-380), and he further says there was no understanding or talk among them that they were to get \$100 out of it, or anything of the kind (p. 380).

Jordan is flatly contradicted by John F. Kelly, with whom it is conceded the arrangement about taking the claim was made. Kelly says that Jordan had spoken to him a number of times about locating him on a timber claim, and that he told

him about the tract on "Brumbaugh Creek" (p. 394). That the arrangement with Jordan about buying his claim was made when he gave him the final receipt (p. 397), and that prior to that time he had not made any agreement with him to buy the claim or that he would take the claim for him or the Booth-Kelly Lumber Company (p. 397), and that he explained to him that they could not make any such agreement (p. 397). That the agreement was that they would advance him the money to pay for the land and his expenses, and that he would repay it when he sold his claim (pp. 397-398). Kelly also testifies that Jordan was anxious to sell his claim because his wife was about to sue him for a divorce (pp. 398-399), which is not disputed by Jordan. Kelly also testifies that he loaned Jordan \$50, after the deed was made, but which he had repudiated and refused to repay (pp. 413-414), which is not disputed by Jordan.

The Government's case, as to the Jordan patent, rests upon the testimony of Jordan, the patentee, and the question is presented to this court whether it will accept the testimony of such a witness as Jordan has shown himself to be, stultified and impeached as he is in every way it is possible to impeach a witness, or whether it will accept the testimony of John F. Kelly as to the transaction.

Mr. Kelly is a man of high standing in the community where he resides, and while he has, as land agent of the Booth-Kelly Lumber Company, bought

thousands of acres of timber land for it, he has never been accused of land frauds or of any connection with land frauds. At the time Mr. Kelly testified in the case he could not have been prosecuted criminally, because the statute of limitations had run against it, and it furthermore appears that at that time he had ceased to be a stockholder in the Booth-Kelly Lumber Company or to have any financial interest whatever in it (pp. 393-394). Consequently, there was no motive or reason why he should not have told the truth as to the transaction with Jordan, and we believe he did tell the truth about it, and that nothing was said to Jordan about buying his claim, or anything of the kind, until after he had filed on the land and paid for it and had gotten the final receipt.

Mr. Kelly is a business man, and has been engaged in the timber business for many years, and says in his testimony that he knew it was against the law to have Jordan to take a claim for him or to make any agreement with him to sell it (p. 397), and that he so explained the matter to Jordan and refused to deal with him at all until he had gotten the final receipt (p. 397), and Jordan practically admits as much (pp. 259-260-265). He also says he does not remember the conversation that took place between him and Kelly at the time he gave him the final receipt (pp. 264-265).

Now, the point we make is that it is highly improbable that Mr. Kelly, knowing as he did the il-

legality of such an arrangement as Jordan claims was made, and that he would be incurring criminal liability not only for subornation of perjury, but also for violating the conspiracy statute, would have made such an arrangement when the evidence shows that they were buying land in that locality for less than the Jordan claim would cost (pp. 403-406). It is shown in Defendant's Exhibit No. "L," set forth on the pages cited, that they were buying claims in that section along about that time at prices ranging from \$300 to \$800 per claim of 160 acres, some even lower than that, and some higher, but a fair average would not greatly exceed \$550 per claim. Now, is it possible that any sane man or set of men would, even if criminally inclined, enter into an arrangement which would subject them to criminal prosecution and forfeiture of the purchase money, in order to get title to timber claims which they could purchase for less money and without incurring any liability or risk whatever? Such a thing is preposterous. Men do not take such chances, if at all, unless there is a fair prospect of large gain, or some strong incentive which was wholly lacking here.

The learned trial judge in an opinion filed in this case uses this language:

"It may be, and I think it is quite probable, that there was no agreement in express terms between Jordan and Kelly that the land should be entered for the defendant, but the entire circumstances,

together with Jordan's testimony, leave it practically unquestioned that whether such an agreement was made or not Jordan understood that the land was not to be taken for himself, but for the defendant, and that such was the understanding of Kelly" (p. 40).

The decisions of the courts interpreting the Timber and Stone act are somewhat indefinite as to the kind of an understanding or "agreement" is within the statute, but the consensus of opinion seems to be that there must be a meeting of the minds of the parties expressed in some tangible form, that the title when secured shall inure to the benefit of some other person than the entryman.

In *United States v. Richards*, 149 Fed. 443 at 450, which was a criminal prosecution for violating a similar provision of the homestead law, Munger, judge, instructed the jury as follows:

"The statute, in forbidding the applicant to make directly or indirectly any agreement or contract in any way or manner with any person by which the title he may acquire from the Government shall inure in whole or in part to the benefit of any person except himself, means by the word 'agreement,' that there must be a meeting of minds expressed in some tangible way, and must be an intent in some way to be binding upon the parties. One party may have intended to sell, the other party may have intended to buy, yet this would not be sufficient, unless the intention of each

was in some way communicated from one to the other, and was understood and agreed to by both.

An agreement, as the word 'agreement' is used, need not be in writing. It need not be of sufficient form or of the nature to be enforced in court. It is enough if it is proven beyond a reasonable doubt that in some way the minds of the applicant and some other person have met definitely and understandingly—that there is a mutual consent—that, when the applicant may acquire title to the land from the United States, it shall inure to the benefit of such other person for a consideration; that is, that in truth and in fact the applicant is ready to acquire the land for the use and benefit of another. And any words and acts manifesting this mutual consent of the minds of the parties are sufficient to constitute a contract or agreement."

Conceding the law to be as there stated, and it is certainly stated as liberally in favor of the Government as the statute will warrant, and there was no violation of the act, because Kelly testified positively that he made no agreement with Jordan as to taking the land for himself or the company prior to the time he brought him the final receipt (p. 397), and consequently the minds of the parties never met or agreed prior to that time. Even if Jordan's intention was at and before he filed upon the land to take it for the benefit of the company, there would be no agreement to that effect unless Kelly at that time also so intended

and understood it. Where a man testifies positively that he did not make such an agreement because he knew it would be a violation of law to do so, it should require something more than suspicious circumstances to justify any court in finding that he did intend to make such an agreement and did intend to violate the law. Kelly may have supposed that the company would get the land eventually, but that would not be a violation of the statute. He abstained from making any agreement for its purchase before the final receipt was issued because he did not want or intend to violate the law or lay himself liable to prosecution criminally, and yet the court below says in effect that it will imply such an agreement and the consequent violation of the law, notwithstanding his positive denial that he ever made such agreement.

In the case of *United States v. Budd*, 144 U. S. 154, at page 163, the court says:

“No man is presumed to do wrong or violate the law, and every man is presumed to know the law. And in this respect the case does not rest on presumptions, for the testimony shows that Montgomery knew the statutory limitations concerning the acquisition of such lands, and the penalties attached to any previous arrangement with the patentee for their purchase.”

In view of this presumption of innocence, where is the preponderance of evidence as to when the agreement was made? Is it with Kelly that the agreement was made after Jordan brought him

the final receipt, and therefore an innocent and lawful agreement, or is it with Jordan, contradicted and impeached as he is, who claims it was made before he filed on the claim, and therefore unlawful and criminal?

We submit that the Government failed to make out its case as against the Jordan patent by a fair preponderance of the evidence, or in the clear and convincing manner required in such cases, and that the learned judge of the court below erred in setting aside the patent, and we ask that that part of the decree be reversed.

### **The La Raut Patents.**

The La Raut patents, although a part of the same group of claims as the Jordan claim, rest upon a somewhat different state of facts. There are four of the La Raut patents, and as the evidence is practically the same as to all of them, we will consider them together.

### **Land Office Records.**

The Government, as a part of its case in chief, introduced the land office records as to each of the claims, being the declaratory statements, notices, final proof and final receipts.

These records show that each of the entrymen and entrywomen made oath in their declaratory or initial affidavits and in their final proofs, "that they did not apply to purchase the land above described on speculation, but in good faith to appro-

priate it to my own exclusive use and benefit, and that I have not directly or indirectly made any agreement or contract or in any way or manner with any person or persons whomsoever, by which the title I may acquire from the Government of the United States may inure in whole or in part to the benefit of any person except myself" (pp. 63-132).

### **Stipulation as to Payments for Land.**

It was stipulated that the money for the payment of the purchase price to the Government for the land involved in the entries in controversy, including land office fees of Stephen La Raut, Mistress Alice La Raut, Ethel La Raut, Lucy La Raut and Edward Jordan, together with the publication fees and the expenses of the entrymen in taking up the land and going to and from the land office were furnished by the Booth-Kelly Lumber Company, subject to the right of said defendant to show the circumstances and agreement under which said sums of money were paid (p. 136), and in that connection the letter of J. H. Booth to A. C. Woodcock was introduced, showing how the amounts were paid at the land office, and the amounts of such payments (pp. 137-138).

### **C. J. HOWARD, Page 132.**

Government then called C. J. Howard, who testified to being the proprietor of the newspaper, "Bohemian Nugget," and that the notices of final

proof in these cases were published in his paper, and that he did not recall who paid his charges, and that his books did not show and that the notices were in the usual form of such notices (pp. 132-234).

GEORGE W. RIGGS, Page 135.

Government then called George W. Riggs, who testified that he was working for the Booth-Kelly Lumber Company in 1901 and 1902, and assisted Mr. Brumbaugh in cruising timber land in township 21, south of range 2 and 3 west, and that he knew nothing about the entry of the lands in question.

D. H. BRUMBAUGH, Page 138.

Government then called D. H. Brumbaugh, who testified that he was a rancher and was a cruiser for the Booth-Kelly Lumber Company for ten or twelve years, since about 1900, and that he was working for the company in 1902; that he had cruised in townships 21-22-23 west, and that he showed the claims in question to the entrymen and entrywomen two or three months, or such a matter, after it was cruised; that the entrymen and entrywomen brought the numbers of the land to him and he showed them the claims, and that John Kelly paid him for his services (pp. 138-145).

MRS. M. S. APPLESTONE, Page 145.

Government then called Mrs. M. S. Applestone, who testified that she lives in Lewiston, Idaho, and that Alice La Raut is her mother, and Stephen

La Raut is her step-father; that she lived in Portland in 1902, and was visiting her mother at Saginaw in the spring of 1902, and that her mother told her that she had taken a timber claim for Robert Booth, and that she was to be paid \$100 for her claim, and that she was paid \$100 therefor (pp. 146-147).

She further testifies that she saw there the forms for making final proof, showing the questions and answers, and that her mother told her Robert Booth had sent them to her (pp. 148-159).

This is denied by Robert A. Booth (p. 309).

She says she does not know whether Booth's promise to pay her mother \$100 was before or after she had filed on the land (p. 153).

She says on cross-examination that she does not remember whether the conversations were before they filed on the land or before they proved up on the claims (p. 156).

Says the conversations were with her mother (p. 156).

Says they got an additional payment of \$100 about the time they went to Canada (p. 157).

Says her mother did not tell her that Robert Booth ever talked to her personally about the matter (pp. 158-59).

Says she does not remember who she first told about these conversations, nor about when it was, nor who it was she told about them (p. 161).

Her testimony throughout shows that she is uncertain as to when the conversations with her

mother occurred. Her uncertainty as to other things suggests that she might be mistaken as to the terms of the conversation.

LUCY LA RAUT, Page 164.

Government then called Lucy La Raut, one of the entrywomen, whose testimony is clearly and distinctly against the Government on every proposition.

ETHEL M. LEWIS, Page 193.

Government then called Ethel Lewis, formerly Ethel La Raut, one of the entrywomen, whose testimony is also clearly against the Government.

Both Ethel M. Lewis and Lucy La Raut testify that they took the claims in good faith for their own benefit, and that there was no agreement to sell it to the Booth-Kelly Lumber Company, and that they still own the claims and that the deeds they made were intended as security for the advances made to them to enable them to take and pay for the claims (pp. 176-182, 213-221).

GEORGE W. RIDDLE, Page 229.

The testimony of George W. Riddle, receiver of the land office, was introduced for the purpose of identifying the records offered as evidence (pp. 229-232).

FRED C. RABB, Page 228.

The testimony of Fred C. Raab was for the purpose of showing that no contest or controversy

had arisen in reference to the claims in dispute (pp. 228-229).

LOUIS SHARP, Page 232.

The testimony of Lewis Sharp was for the purpose of showing that no investigation had been made by the Government in reference to the claims (pp. 232-233).

On page 241 is a stipulation that the patents were delivered to F. E. Ally and that he delivered the same to John F. Kelly.

EDWARD JORDAN, Page 242.

Government then called Edward Jordan, upon whose testimony we have already commented.

D. H. BRUMBAUGH, Page 273.

Government then called D. H. Brumbaugh, who testified that John Kelly asked him to take up a timber claim, and that he told him he would do so; that he told him to pick out a good one on Brumbaugh Creek; that he would furnish the money, pay his expenses and give him \$100 (p. 275); that about two years after he proved up he deeded the claim to the Booth-Kelly Lumber Company (p. 277). On cross-examination he says that he could not remember whether the conversation he had with Kelly about taking a claim at Cottage Grove or Eugene.

The following question and answer are significant:

“Q. Was that all that was said at that time about it? If you didn’t want to take a timber claim?

A. Yes” (p. 280).

He says he was paid the \$100 at the time he signed the deed, or about that time (p. 284). Finally he says he sold the land to the company for \$520, being \$420 paid for the land and land office fees, and the \$100 paid him at the time the deed was made (pp. 284-285). Says there was nothing said in the conversation with Kelly about deeding the land to the company (p. 285).

Mr. Kelly testifies positively that no such conversation occurred (pp. 400-401). Mr. Kelly details a conversation he had with Brumbaugh about what he had told the authorities who were investigating the land frauds in Oregon, and he said that he told them that he had made no arrangement whatever to dispose of his claim until after he had proven up on it (p. 419), and this is not denied by Brumbaugh. We tried to get hold of the affidavit Brumbaugh made at that time, but were unable to do so (p. 283).

The comments we made as to the testimony of Edward Jordan apply to Brumbaugh’s testimony.

### **Defendant’s Case.**

The defendant, Booth-Kelly Lumber Company, laid its books before special agents of the Government before this suit was brought, and also since that time, and has disclosed all the facts in con-

nection with these claims. It has kept nothing back, nor has it sought to evade the production of any paper, document or book the Government wanted.

#### R. A. BOOTH, Pages 298-311.

The testimony of R. A. Booth is full and clear as to the transaction with the La Rauts. It shows clearly and distinctly that there was no agreement with any of them that he or the company was to have their claims, but that he was doing what he did for them to assist them and for their own benefit. He testifies that he advised Stephen A. La Raut not to sell their claims, but to hold on to them, and if they had done so they might have gotten a great deal more out of them (p. 319). and he explains the manner in which the settlement was made with Stephen A. La Raut and his wife (p. 307).

#### H. A. DUNBAR, Page 337.

H. A. Dunbar, who took up a claim at the same time as the others, and in the same manner, was not called by the Government, but the defendant called him and he testified that he took his claim in good faith, and for his own benefit, and that there was no agreement to sell it to the company (p. 339), and that he sold his claim to the company in November, 1904, for \$1300 (p. 341). He also explained the entries in the books as to these claims (p. 342). He also says that Mr. Booth told him he, Booth, was to be responsible for the claims

(p. 343), and that he assisted the La Rauts in filing on their claims, and in proving up on them, at the request of Mr. Booth (p. 341).

JOHN F. KELLY, Page 393.

John F. Kelly testified about the Jordan and Brumbaugh claims, and that no agreement was made with them about purchasing their claims until after they proved up (pp. 394-401). He testifies that claims on Brumbaugh Creek at that time were worth from \$3.50 to \$5 per acre (p. 401). That they had bought other land in that section, and produced list of purchases, showing prices paid (p. 403), and states that the actual considerations were as there stated.

GEO. H. KELLY, Page 422.

Geo. H. Kelly, who succeeded R. A. Booth as manager of the company, fully corroborates Mr. Booth as to the understanding as to the La Raut claims, and also as to the settlement with Stephen A. La Raut and wife (pp. 423-428).

A. C. DIXON, Page 435.

A. C. Dixon, who succeeded George H. Kelly as manager of the company, fully corroborates Mr. Kelly and Mr. Booth as to the understanding about the La Raut claims and about the settlement with Stephen A. La Raut and his wife (pp. 436-439). He is the present manager of the company, and says that Ethel M. Lewis and Lucy La Raut still own their claims (p. 438).

### Government's Rebuttal.

The Government called in rebuttal George Sorenson, T. B. Newhausen, M. A. Martin and C. B. Mead, who gave their opinions as to the value of the timber in the Brumbaugh region, and as we view it is of no particular value, so far as determining the bona fides of these patents is concerned.

We have thus gone briefly over the evidence relied upon by the Government to justify the setting aside of the La Raut patents. We call the attention of the court to the comments of Judge Bean, before whom the case was tried, upon this evidence (pp. 37-39).

He says, among other things (p. 37):

“Now, so far as the four La Raut claims are concerned, there is no direct testimony to support the averments of the bill. Indeed, it is all to the contrary, and to the effect that the entries were made for the exclusive use and benefit of the entrymen, and that there was no agreement, express or implied, that the land should be conveyed to the defendant company or that the entrymen made the entries in reality for said company or any other person.”

We believe this court, when it has read the testimony, will reach the same conclusion.

It is argued that if the Jordan claim and the Brumbaugh claim are fraudulent, or, in other words, if the court shall believe the testimony of

Jordan and Brumbaugh as to their claims, that then the court must find the La Raut claims fraudulent, also, because taken at the same time and in practically the same way, and that the evidence as to those claims is admissible against the La Raut claims.

The comments of the court as to a similar contention in *United States v. Budd*, 144 U. S. 154 at 164, are strongly in point. The court says:

“The Government relies also on the testimony of Edward J. Searls that Montgomery promised to pay him \$125, and all costs and expenses, if he would enter a tract of timber land and convey it to him, and that thereafter Montgomery advanced the money for the payment to the Government, and subsequently, on receipt of a deed, paid him the \$125. If it be conceded that this testimony as to another transaction be competent in this case, and there be put upon the testimony the worst possible construction against Montgomery, to the effect that he made a distinct and positive agreement with Searls for the purchase of a tract which the latter was to enter and obtain from the Government, and so a transaction within the exact denunciation of the statute, still that testimony only casts suspicion on the transaction in question here, and suggests the possibility of wrong in it. Because a party has done wrong at one time and in one transaction, it does not necessarily follow that he has done like wrong at other times and in other transactions. Suppose in each of the twenty-

one cases specified in the testimony the Government had filed a separate bill making the patentee and Montgomery parties defendant, and charging, in each, as here, a prior unlawful agreement, and in twenty of them the patentee and Montgomery had each answered, denying under oath any prior agreement, while in the twenty-first they had likewise answered, admitting in full as charged the making of such an unlawful agreement, would the admission in the one case be adjudged, in the face of the denial under oath in the other twenty, clear, full and convincing proof that in those cases likewise there was a prior, unlawful agreement? And yet such admission of both patentee and Montgomery would be stronger and more satisfactory evidence than the separate testimony of the patentee. And this is all the testimony which in any manner points to wrong in this transaction. Surely, this does not come up to the rule so well established, as to the necessary proof in a case like this."

Besides, as tending to refute any such inference, is the fact which is undisputed, that the Dunbar and Roche claims were disposed of to the company in 1904 for \$1300 apiece. The company also paid Stephen A. and Alice La Raut more than \$100 apiece for their claims, and that Ethel M. Lewis and Lucy La Raut have been paid more than the \$100 on their claims and still own them, show conclusively that as to those claims there was

no agreement that they were to have only \$100 apiece for their claims.

The Government's counsel argue that the entries in the books of the company corroborate the theory of the Government that these entrymen and entrywomen were hired to take the claims, and were to be paid \$100 apiece for their services.

Copies of the entries in the books appear at pages 290-297 of the printed record. These entries show payment to the parties of \$100 each, but those payments are explained by Mr. Booth (pp. 315-316) and Mr. Dunbar (pp. 353-355), and by Lucy La Raut (pp. 171-178-189) and by Ethel M. La Raut (p. 217).

This testimony shows that the amounts paid the La Rauts were advances made as they needed the money. As to the Jordan and Brumbaugh claims, they were charged with the \$100 because they sold their claims for that amount over and above what they had cost them.

The testimony shows conclusively that these accounts were separate accounts, and were kept in that manner so that the company could tell at any time the amounts that had been advanced when final settlement was made (pp. 309-310-343-364).

The books afford the strongest kind of evidence against the theory of the Government, because it is highly improbable if the officers and agents of the company had entered into a vile conspiracy to defraud the Government out of these lands, that they would have spread the matter out

on the books of the company and thus made public record of the transaction. If there had been any conscious purpose of perpetrating a fraud, they would have made no entries in the books showing the details of the transaction with each entryman and entrywoman, such as were made in these entries.

It was stipulated that the Booth-Kelly Lumber Company at all times since the execution of the patents to the entries involved in this case, has paid taxes on this land and has exercised dominion and control over the same. This applies more particularly to the La Raut claims, because the Jordan claim was bought soon after he proved up.

It is argued that the fact that the company has paid taxes on the land shows it to be the absolute owner, and is inconsistent with the claim that it was holding the title as security. We are unable to agree with counsel. The company had the title and while it was holding it as security, it would naturally list them with its other lands and pay the taxes for the benefit of the parties, as well as its own protection, and be reimbursed when the lands were finally redeemed or sold.

We reiterate here what we said as to the Jordan claim, that in view of the fact that the company could get all the claims in that vicinity it wanted, at prices of about what these claims would cost, it is highly improbable that its officers, knowing as they did the law, would have entered into a conspiracy such as is charged in the bill, and that Mr.

Booth, a man of high standing and reputation, would draw his own relatives, innocent and hard-working young women, into it, when the gain was so small and the risk so great. To justify a court in finding they did so would require more than inferences or innuendos drawn from the books of the company. The matter of bookkeeping was left to H. A. Dunbar, the bookkeeper of the company, and if he did not make the entries in the proper way or did not make them so as to suit the refined ideas of the Government counsel, such fact would fall far short of showing fraud. The facts as to the bona fides of the entries of the claims are conclusively established, and entries made in the books years ago, though erroneous, would not be sufficient to overcome the facts of the case.

It will be noticed by the court that the Government did not call Stephen A. La Raut or Alice La Raut. The testimony shows they were in Alberta, Canada, but the Government could easily have obtained their testimony. The failure to do so gives rise to the presumption that they would not uphold the contentions of the Government.

The Government, instead of calling them, called Mrs. Applestone, a daughter of Alice La Raut's, who testified in a more or less uncertain way of conversations held some time in 1902, eight or ten years ago, in which her mother told her she had taken a timber claim for Robert Booth, while Robert Booth, in answer to this statement, not only denies it emphatically (p. 303), but swears that

he never talked to Stephen A. La Raut or his wife about their claims until 1908 (p. 303), and he explains why he came to talk to them at that time (pp. 303-304). He also testifies that the Applestone woman told him about that time that she did not know anything of consequence about the claims; that she had heard her mother say or talk about what she would do with some of the funds when they sold their claims (p. 303). So that in addition to the presumption that the testimony of Stephen A. La Raut and Alice, his wife, would have been against the Government, this evidence shows that they would have testified the same as Lucy and Ethel have testified in the case.

The Government called Lucy La Raut and Ethel M. La Raut, now Ethel M. Lewis. By so doing it made them its own witnesses, vouched for their veracity, and is bound by their testimony. No one will claim that their testimony lends any credence whatever to the theory of the Government in this case, but does show honesty and good faith, not only as to their own claims, but as to those of Stephen A. and Alice La Raut.

The Government's counsel admit in their brief that the evidence upon which a cancellation of the patents is asked is mainly circumstantial. Indeed, there is no direct evidence at all of fraud as to the La Raut patents. As said by the court below the direct evidence is all the other way. So the question is presented to this court whether the direct and positive evidence of all the parties to the

alleged fraud, showing that there was no fraud, is to prevail or whether it is to be overcome by inferences to be drawn from circumstances which in a fertile imagination might be considered more or less suspicious.

The circumstances to which the Government's counsel point in their brief as showing fraud are perfectly consistent with good faith and honesty in the transactions.

Counsel say that if the parties were intending to perpetrate a fraud on the Government in these entries, they would naturally have done exactly what they did do, and they point to a long list of doings beginning with the cruising of the land and ending with the amending of the answer in this case, to conform to the facts.

They say that upon cruising the land and finding these claims subject to entry the company would naturally turn to relatives and employees and offer them compensation for their services in taking the claims. Is it not just as fair an inference and just as natural to suppose that Mr. Booth and Mr. Kelly, when informed that these lands were subject to entry, recalled the requests often made to them by these entrymen and entrywomen to locate them on timber claims, and that they wanted to give them the chance to take claims for their own benefit?

They say the company paid all expenses; attended to securing witnesses, notifying the entrymen of the date of final proof, and attended to get-

ting the witnesses present, and furnished the money to pay for the land.

There is nothing in all of that inconsistent with perfect good faith. The La Raut women were inexperienced persons, and the others were working for the company in one capacity and another, and could not take the time, so somebody familiar with the procedure in the land office had to look after the claims for them, take them onto the land and to the land office, and notify them of the day set for making final proof and look after it for them, and the company having advanced the money, it naturally felt an interest in seeing that everything required was properly done.

Counsel say the entrymen paid no attention to their claims. Jordan paid close enough attention to his to sell it to the company soon after he proved up. The La Rauts paid no particular attention to theirs, because they were depending on Robert Booth to look after theirs for them, pay the taxes, etc. What else could they do with wild timber land? The title was in the name of the Booth-Kelly Lumber Company. The land would naturally be assessed to the company, and it would pay the taxes along with its other property to protect its liens upon it.

Counsel say the entries in the books would have been different if the claims were bona fide, taken for the benefit of the entrymen and not for the benefit of the company. We are unable to see anything in these entries to justify any inference

of fraud, but quite the reverse. These claims were entered in the books differently from all others where the lands were purchased by the company. In such cases there was simply a charge to stumpage account of the amount paid out for the land, but here there is a separate account under the name of each entryman, with an itemized statement of all the expenditures from which it could be easily and readily ascertained how much the company had advanced on each of the claims. Whether the entries are made in the way a bookkeeper should have made them or not, they are plain enough to anyone who wants to understand them.

Counsel say the keeping of the deeds off the records was for the purpose of concealment, and to aid in carrying out the fraud. The evidence is that the first deeds were made to Robert A. Booth as security under an arrangement between him and the La Rauts. He had every faith in them and they had every faith in him. As between them there was no need of recording the deeds. The most natural thing under the circumstances would be not to record them. If the company had wanted to conceal the fact of its holding the title to the property it would not have listed it among its assets and paid taxes on it, as counsel for the Government admits it did do, nor would the entries that were made in the books ever have been made. These deeds doubtless would not have been recorded when they were but for the fact that there had been a change in the management of the company. Mr.

Booth had retired and Mr. George H. Kelly had become its manager. Stephen A. La Raut was about to be sued for debt and judgments obtained against him, and it then became necessary for the company to record his deed, and while recording his the others were recorded.

The land fraud investigations had nothing to do with the deeds being recorded or not recorded. In fact, this very matter was investigated by the Government at that time, as shown by the testimony of Brumbaugh and Jordan, and the books inspected by special agents of the land department, and they found nothing to justify proceeding against any of the parties. If so, why did they not indict Booth and Kelly for subornation of perjury or conspiracy, or both? There has been no concealment at any time, but the company has at all times made full disclosures about these transactions, laid the books open to Government agents time and again, because it had nothing to conceal.

Council claim that because the entrymen made no inquiries about the property or its value, and their indifference in the matter shows that they had no further interest in the land. This, however, is explained by the fact that they depended on Robert Booth to look after the matter for them, and to keep them advised about it. He had told them that when the company sold its holdings in that locality he would see that theirs was put in and sold along with the company's land, or if the company decided to log off the timber it would take

the timber on theirs also and pay them stumpage. So there was nothing to do but wait for the coming of one or the other of these contingencies.

Some point is made that in the original answer the Booth-Kelly Lumber Company claimed to be the legal and equitable owner of all the La Raut claims. The way that mistake came to be made is fully explained in the testimony of A. C. Dixon (p. 439). When the mistake was discovered we promptly notified the Government's counsel, and before the commencement of the taking of testimony a stipulation was made amending the answer, as shown at page 33 of the record.

The error was one easily made on the part of counsel, in supposing that the company had settled with all of the La Rauts, when in fact it had only settled with Stephen A. La Raut and his wife, and leaving Ethel and Lucy still the equitable owners of their claims.

Government's counsel set forth great wails in their brief as to the treatment of Stephen A. La Raut and wife, by which they have been driven as "exiles" into the frozen regions of Northern Canada. They apparently overlook the fact that the Government is not their guardian. They, in common with many other Americans, took the notion that they could better their condition by going to Alberta, Canada. Mr. Booth advised them against going, and advised them not to sell their claims, but they were determined on going and offered to take \$100 additional for their claims. George H.

Kelly, the then manager, says when they offered to take that he did not feel that he was called upon to offer more than they had asked (p. 429).

The value of the claims are greatly overestimated by Government's counsel. An isolated timber claim in a region like that has no market value. The only thing that gives it any market value is that some large concern, with large holdings in the vicinity, is paying a certain price per acre or per thousand feet stumpage. There were no large holdings in there except those of the Booth-Kelly Lumber Company, acquired by purchase from Jones & Cook (p. 310), and consequently it was the only customer for such lands and fixed the price it was willing to pay.

It is very easy to say that timber is worth so much per thousand feet stumpage, and that there are so many million feet on the tract, and hence that it is worth the amount thus shown, but it is quite another matter to sell it for that amount.

We submit in conclusion that it is impossible to find that the La Raut claims were fraudulent without finding that Robert A. Booth, George H. Kelly, John F. Kelly, H. A. Dunbar, A. C. Dixon, Thomas Roche, Ethel M. Lewis and Lucy La Raut deliberately perjured themselves in their testimony in this case. There is nothing in any of the circumstances referred to by Government's counsel to justify any such conclusion.

The Booth-Kelly Lumber Company is one of the largest timber land owners in the State of Ore-

gon. Its lands have been acquired in the main not for speculative purposes, but to supply their large milling plants with timber in its business as a manufacturer of lumber. It has never been accused of land frauds of any kind. Its record is exceptionally clear in that respect. During the land fraud investigations in Oregon its affairs were carefully looked into by the Government agents, and if they had found evidence of fraudulent dealings the company and its officers would have been indicted and prosecuted. The only indictment against any of them was one against Robert A. Booth, and he was acquitted by a jury of his peers. To say that a company with such a record would, by its officers and agents, go into the fraudulent and criminal conspiracy set forth in the bill, or that the La Rauts, who were honest, hard-working people, would go into such a conspiracy, is highly absurd.

The decree of the court below as to the La Raut claims is clearly right, and we ask that it be affirmed.

Respectfully submitted,

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